

**CRIMINAL JUSTICE AND IMMIGRATION BILL
REGULATORY IMPACT ASSESSMENTS**

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CRIMINAL JUSTICE AND IMMIGRATION BILL OVERARCHING REGULATORY IMPACT ASSESSMENT

1. Criminal Justice and Immigration Bill

This is the overarching Regulatory Impact Assessment (RIA) for the Criminal Justice and Immigration Bill which has been developed to provide an overview of the benefits, costs and savings provided by the Bill.

Individual RIAs have been developed in accordance with best practice on those parts of the Bill which have indicated particular impacts in terms of costs and benefits.

2. Purpose and intended effect

Objective

The objective of the Bill is to reduce re-offending and protect the public, provide justice for all and increase confidence in the justice system.

The Bill will deliver the overall objective by:

- building public confidence in the sentencing framework by imprisoning serious and dangerous offenders while others receive tough and effective community sentences;
- ensuring that prison and probation resources are targeted at serious and violent offenders;
- strengthening the protection of the public from violent offenders;
- strengthening the pre-court and community penalties available for young offenders so that, wherever possible, offending by children and young persons is effectively addressed without the need to resort to custody;
- ensuring that the police and their community safety partners have appropriate powers to tackle anti-social behaviour at its roots and thereby reinforce a culture of respect;
- ensuring that the UK does not provide a safe haven for foreign criminals and terrorists and send a clear signal that such people cannot expect to secure a settled status in this country; and
- outlawing the possession of extreme pornography.

Devolution

All of the Bill's provisions extend to England, or England and Wales, while certain provisions also extend to Scotland and Northern Ireland.

Background

The Government has changed the face of penal policy over the last ten years by

- recognising the need to intervene as early as possible to prevent children who might drift into crime from doing so;
- developing interventions in the Youth Justice System that aim to reduce the chances of re-offending;
- focusing policy on ensuring that the dangerous offender remains in prison until he or she ceases to be a danger;

- Giving the law enforcement authorities the tools to bear down on anti-social behaviour;
- Increasing the range of punishments available;
- Recognising the need to do all we can to reduce re-offending – by massively increasing drug treatments and offending behaviour interventions; more work with offenders in prison and on release, tougher community penalties, more unpaid work, more restorative justice and greater monitoring and support for those who have offended when they are in the community, in particular through the introduction of the Multi-Agency Public Protection Arrangements.

This shift in policy is beginning to show results, with proven re-offending rates falling by around two per cent between 2000 and 2004 for adult and young offenders, increased number of dangerous offenders off the streets, and a resultant contribution to reduction in crime. The proposals in this Bill are part of this ongoing work.

Youth Rehabilitation Order

- The Bill creates a new statutory community sentence for young offenders. The Youth Rehabilitation Order (YRO) would be available as a sentence for all suitable offenders aged under 18 when convicted of an offence.
- It would replace nine existing juvenile community sentences with a single generic sentence. This will consist of a menu of interventions including programmes, reparation, treatment for mental health issues and drug misuse, supervision and curfew, which the court can choose from to meet the needs of the individual offender.

Modification of power to make Referral Order

- The Bill extends the circumstances in which a court may make a Referral Order. When a child or young person is given a referral order, he or she is required to attend a youth offender panel, which is made up of two volunteers from the local community and panel adviser from a youth offending team (YOT). The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is the prevention of reoffending by the offender.
- To help nip low level offending in the bud referral orders will be made more widely available by providing that an order may be made where the offender has previously been bound over or where the offender has had one previous conviction and where, in respect of that previous conviction, a referral order had not been made.

Access by Her Majesty's Court Service (HMCS) to Department of Work and Pensions (DWP) records

- The Bill includes provisions to allow HMCS enforcement staff access to offenders' benefit status to determine if a deduction from benefit (DB) order is the appropriate intervention.

Prison and Probation Ombudsman

- The Bill places the Prisons and Probation Ombudsman (PPO) on a statutory basis.
- This will provide an enhanced structure for:
 - adjudication of complaints from offenders and immigration detainees;
 - scrutiny of deaths of prisoners, young persons detained in Young Offender Institutions, residents of approved premises and those in immigration detention accommodation;
 - supporting the Coroner's inquest in fulfilling the investigative obligation arising under Article 2 of the European Convention on Human Rights in relation to such deaths; and
 - investigation of particular incidents or matters of concern on request by the Secretary of State.

Youth Conditional Caution

- The conditional caution is a pre-court disposal administered by the Police following review of the case by the Crown Prosecution Service. It allows an offender to be given a caution, rather than face prosecution, on condition that he or she complies with agreed requirements. Failure to comply usually results in prosecution for the original offence.
- The Bill extends the adult conditional caution scheme to young people aged 16 and 17.

Inclusion of cautions etc in Rehabilitation of Offenders Act 1974

- The aim of the Rehabilitation of Offenders Act 1974 is to help former offenders to fully reintegrate into society by ensuring that their criminal convictions are, in effect, expunged from their record after an appropriate interval. Under the Act, following a certain period of time, all convictions (except those resulting in prison sentences over 30 months) are regarded as "spent". As a result the offender's record is wiped clean and they are regarded as rehabilitated. For most purposes a rehabilitated person is treated as if they had never committed an offence and, as such, they are not obliged to declare them, for example, when applying for a job.
- The 1974 Act currently does not apply to warnings, reprimands, simple cautions and conditional cautions; the Bill rectifies this omission. Warnings, reprimands and simple cautions will become "spent" immediately, while conditional cautions will become "spent" after 3 months.

Extension of powers of CPS designated caseworkers

- The Bill seeks to remove certain statutory exceptions which currently limit the types of case and hearing in which the Crown Prosecution Service (CPS) Designated Caseworker (DCW) may be the advocate, thereby extending their remit to prosecute a wider range of offences in the magistrates' courts.
- This approach enables CPS lawyers to focus more effectively on the provision of advice and focus on more serious prosecutions before the Crown Court.

Criminal Legal Aid

- The Bill makes amendments to provisions on criminal legal aid in the Access to Justice Act 1999:
 - to make it possible for a right to representation to be granted at an earlier stage;
 - to widen the power to pilot schemes; and
 - to make it easier to obtain information from government departments for the purposes of means testing via a statutory gateway.

Miscarriages of Justice compensation

- To complete the implementation of the programme of reform of the arrangements for paying compensation in cases of miscarriage of justice, the Bill introduces an overall cap of £500,000 for awards of compensation, which is still a very significant sum.
- It also extends the Assessor's power to make deductions because of conduct and convictions from the whole of the award, with the possibility of the award being reduced to a nominal payment in exceptional cases. It also makes provision to provide that the maximum recoverable for loss of earnings to be 1.5 times the median gross annual earnings, the same as for compensation paid to victims of crime.
- The Bill introduces a 2 year time limit for the acceptance of applications (save in exceptional circumstances).

Extreme pornographic material

- The Bill seeks to make the possession of extreme pornographic material an offence. It is already an offence to publish or distribute such material.
- There is now some evidence that, with the development of the Internet, the boundaries of the type of pornographic material available are being pushed back with more extreme images being sought.

Prostitution

- The Bill introduces a new sentence, as an alternative to a fine for those convicted of loitering or soliciting order.
- The new order will:
 - encourage and enable persons involved in prostitution to address the causes of their offending, and thereby find a way out;
 - achieve an overall reduction in street prostitution; and
 - improve the safety and quality of life of communities affected by street prostitution, including those individuals directly involved in street sex markets.
- The Government acknowledges that the offence of loitering or soliciting for the purposes of prostitution has been widely criticised for not reducing re-offending.

Increase in penalties for misuse of personal data

- The Bill aims to deter more effectively the wilful misuse of personal data by adding to the current financial sanctions a more severe but proportionate custodial sentence.
- This will help increase public confidence in the sharing of personal data in the interests of legitimate activity including efficient Government.

Violent Offender Orders

- The Bill introduces a civil order to better manage the risk posed by those who have been convicted of serious violent offences, by enabling courts to impose conditions on them after they have reached the end of their sentence.

Premises Closure Orders

- The Bill introduces a new power for the police and local authorities to apply for a court order to close and seal, for a set period, a property at the centre of significant and persistent disorder, regardless of tenure.

Offence of creating nuisance/disturbance on hospital premises

- The Bill seeks to create a new offence of creating nuisance or disturbance on NHS premises, together with a power of removal.
- This will allow the NHS to deal more effectively with incidents of nuisance and disturbance and create a better working environment for staff.

Statutory one year review of juvenile Anti-social Behaviour Orders (ASBOs)

- Current Home Office guidance on the use of ASBOs against children and young people recommends that applicant authorities carry out an assessment after one year to review the offenders' progress towards compliance with the order, with a view to varying it if circumstances warrant such a course.
- This is good practice and this Bill makes this a statutory requirement.

New police misconduct procedures

- The Bill enables revised policies for dealing with allegations of misconduct against police officers and on dealing with unsatisfactory performance and attendance in the police service.
- The Taylor Report recommended that a new set of standards/code of ethics should be developed and that whilst any new system should continue to be regulated, the new procedures should be based on good employment practice and in particular adheres to ACAS principles.

Special Immigration Status

- To send a clear signal that foreign criminals and terrorists cannot expect to secure a settled status in this country, the Bill creates a new, special immigration status, for some individuals without the right of abode in the United Kingdom.
- The provision will allow for reporting and residency conditions, and will deny those with this special status access to employment and to mainstream benefits. Instead, those who are destitute will be supported by the Border and Immigration Agency.

Rationale for Government Intervention

The measures set out above are essential to improve the justice system for the public. This improvement will be measured by better outcomes in penal policy; fewer offenders re-offending; more effective public protection from dangerous offenders; a system where the public have confidence that the punishment fits the crime; and a system more connected to the communities it serves; a system that victims believe understands and looks after them.

3. Consultation

Within Government

Consultation on these provisions has taken place with the Office of Criminal Justice Reform (OCJR), Home Office, Ministry of Defence, Northern Ireland Office, the Attorney General's Office and the Parole Board.

Public consultation

Many of the provisions were included in the following documents:

- 'Penal Policy – a background paper', Ministry of Justice, 9 May 2007
- 'Youth Justice – The Next Steps', Home Office, 8 September 2003
- 'Strengthening powers to tackle anti-social behaviour: Consultation Paper', Home Office, November 2006
- 'Tackling nuisance or disturbance behaviour on NHS healthcare premises: a paper for consultation', Department of Health, June 2006
- 'Consultation on the possession of extreme pornographic material', Home Office April 2005
- 'Paying the price: a consultation on prostitution', Home Office, July 2004
- 'Increasing penalties for deliberate and wilful misuse of personal data: Consultation Paper', Department for Constitutional Affairs July 2006
- 'Home Office policy document on Violent Offender Orders', Home Office, April 2007.

4. Options

- Retain the current position and not introduce the changes outlined in the Bill – this would mean that the necessary structural changes and powers are not in place to ensure that prison and probation resources are targeted at serious and violent offenders.
- Implement in part – to do this might enable some of the developments we seek to make to the criminal justice system, but would not realise the full benefits from the proposed reforms.
- Implement in full – would allow us to move forward on building public confidence in the sentencing framework, strengthening the protection of the public from violent offenders, strengthening the pre-court and community penalties available for young offenders; and ensuring that the police and local authorities have appropriate powers to tackle anti-social behaviour at its roots.

It is recommended that the measures in the Bill are taken forward in their entirety in order to realise all the benefits we seek to introduce.

Benefits and Costs

Benefits and costs are shown in the table attached at Annex A and the benefits of each area are discussed in greater detail in each individual RIA.

Sectors and Groups affected

The provisions of the Bill impact mainly on the public sector (primarily the police, courts and other agencies within the criminal justice system). Where the private and voluntary sectors will be engaged, the business sectors affected are: providers of legal services, providers of offender management services, including custodial establishments; internet service providers and others who unknowingly distribute extreme pornographic material; holders of personal data; and commercial owners or occupiers of premises that may be subject to a premises closure order. The Bill is not intended to create additional burdens for the private sector.

Many of the measures in the Bill will directly impact on legal aid expenditure. This is set out in individual RIAs.

Equality and diversity impacts have been assessed and, where appropriate, Equality Impact Assessments have been produced in respect of particular measures in the Bill.

6. Small Firms Impact Test

The small firms which may be affected are those in the following business sectors: providers of offender management services; internet service providers and others who unknowingly distribute extreme pornographic material; holders of personal data; and commercial owners or occupiers of premises that may be subject to a premises closure order.

7. Competition assessment

The competition assessments are dealt with under the individual RIAs.

8. Enforcement, sanctions and monitoring

Enforcement and sanctions are dealt with under the individual RIAs.

9. Implementation and delivery plan

Implementation and delivery plans for the individual measures in the Bill will be developed as required.

10. Post-implementation review

The component parts of the legislation will be reviewed to check that they are fully effective.

11. Summary and recommendation

It is recommended that the Government's preferred options are taken forward in the Criminal Justice and Immigration Bill.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Rt Hon David Hanson MP
Minister of State
Ministry of Justice
June 2007**

Contact point

Catherine Webster
Criminal Justice and Immigration Bill Team
Ministry of Justice
2 Marsham Street
SW1P 4DF
0207 035 1299
Catherine.Webster@justice.gsi.gov.uk

ANNEX A

	Key Benefits of Preferred Option	Costs
Youth Rehabilitation Orders	<ul style="list-style-type: none"> • A more risk based approach to sentencing young offenders which will focus on individual need such as treatment for substance misuse, education and curfews while also addressing offending behaviour. • The YRO may lead to a reduction in the use of custody for young offenders, particularly those offenders who would benefit from early and intensive supervision in the community rather than in custody. • There are wider benefits to society as the magnitude and quantity of crimes by offenders who complete the programme are reduced. 	There will be one off training costs to the Youth Justice Board of £669,000 to train Youth Offending Team members.
Modification of power to make Referral Order	<ul style="list-style-type: none"> • Referral orders perform significantly better than alternative disposals, and it is therefore reasonable to predict that the additional referral orders made as a result of the new discretionary powers will reduce reconvictions. • Saving to Youth Offending Teams of £194K a year. 	

<p>HMCS access to DWP records</p>	<ul style="list-style-type: none"> • Making these necessary changes and providing the courts with access to benefits information before they engage Department for Work and Pensions (DWP) has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made. • We estimate this link will lead to a 40% to 45% drop in the number of unsuccessful applications for deduction from benefit orders. This therefore has the potential to bring efficiency gains to both departments. 	<p>There will be two costs to HMCS to increase access to show benefit status:</p> <ul style="list-style-type: none"> • HMCS would incur a one off cost for development to upgrade the current HMCS access of personal information screen to include access to benefit information. • HMCS will pay DWP for the number of accesses made by courts staff to view the benefit status of an offender. <p>HMCS is currently working with DWP and their IT service provider to ascertain these costs.</p>
<p>Prison and Probation Ombudsman</p>	<ul style="list-style-type: none"> • A statutory Prison and Probation Ombudsman will possess enhanced independence and status in law. There will be a clear legal distinction between the Commissioner for Offender Management and Prisons and the Secretary of State and the fundamentals of his remit will be enshrined in legislation. 	<p>This proposal will not incur any additional costs. Adequate resources have been made available to the Prisons and Probation Ombudsman to perform the functions that will be placed on a statutory footing.</p>

Youth Conditional Caution	<ul style="list-style-type: none">• Courts will be trying fewer young offenders for low-level offences.• The Crown Prosecution Service will spend less time administering a Conditional Caution compared with pursuing a case through the court.• Young offenders will have an opportunity to make amends for their offending behaviour and seek help for underlying causes without the stigma of a criminal conviction.• Victims and witnesses will see the offence brought to justice and the offender held to account sooner. Victims will also get compensation sooner and will have the opportunity to take part in a Restorative Justice conference, which research suggests can be very effective in enabling the victim to 'move on'• The total savings from the introduction of youth conditional cautions is £489K per year.	
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<p>Extension of powers of CPS designated caseworkers</p>	<ul style="list-style-type: none"> • Maximum flexibility to allow optimisation of staff deployment across the courts. • Improve case building process with lawyers focused on sensitive / complex casework and able to deliver CJS initiatives such as CJSSS and pre-court diversion. • Minimal need for lawyers in the magistrates courts with optimisation of efficiency savings across the board. • A saving to the CPS of £5m a year. 	
<p>Criminal Legal Aid</p>	<ul style="list-style-type: none"> • Facilitate and improve the existing process by which an individual applies for and is granted the right to criminal legal aid representation. 	<p>Costs to the Legal Services Commission associated with establishing the new statutory gateway will be no more than £1 million.</p>
<p>Miscarriages of Justice Compensation</p>	<ul style="list-style-type: none"> • Fairer, simpler and swifter system • Brings about a better balance with compensation for victims of crime • Makes more appropriate recognition of applicants other criminal convictions • Savings of around £2.5 million a year, which will be ploughed back to support victims of crime. 	

<p>Extreme Pornographic material</p>	<ul style="list-style-type: none"> • Helps to protect society, particularly children, from exposure to such material, to which access is increasingly difficult to control. • Enable the enforcement authorities to take action against individuals who, by procuring such material by whatever means, encourage its further production. 	<p>The annual costs of the new offence are estimated as</p> <table data-bbox="1375 355 1955 536"> <tr> <td>Police</td> <td>£11K</td> </tr> <tr> <td>Crown Prosecution Service</td> <td>£65K</td> </tr> <tr> <td>Legal Aid Costs</td> <td>£128K</td> </tr> <tr> <td>HMCS</td> <td>£200K</td> </tr> <tr> <td>NOMS</td> <td>£20K</td> </tr> </table> <p>And an increase of 7 prison places.</p>	Police	£11K	Crown Prosecution Service	£65K	Legal Aid Costs	£128K	HMCS	£200K	NOMS	£20K
Police	£11K											
Crown Prosecution Service	£65K											
Legal Aid Costs	£128K											
HMCS	£200K											
NOMS	£20K											
<p>Prostitution</p>	<ul style="list-style-type: none"> • Reduction of the numbers involved in street prostitution • Reduction in violence, poor health, drug misuse and neighbourhood nuisance associated with street prostitution • Total benefits outweigh the costs with a net benefit of £2.8m in the first five years of the order. 											
<p>Increasing penalties for deliberate and wilful misuse of personal data</p>	<ul style="list-style-type: none"> • There is growing public concern about the misuse of personal data. • Increasing the penalty for this offence will provide public reassurance that the Government is serious about protecting people from crime and upholding the individual's right to an appropriate degree of privacy. 	<p>The annual cost of the new penalty is</p> <ul style="list-style-type: none"> • £16K to the Legal Services Commission <p>And an additional prison place per annum</p>										

Violent Offender Orders	<ul style="list-style-type: none"> Violent Offender Orders will better protect the public from dangerous and violent offenders by ensuring they continue to be subject to conditions designed to manage or reduce risk, after the end of their sentence. 	<p>Court costs over the first three years are estimated at approximately £218K, legal aid costs at approximately £857K, and CPS costs at approximately £197K.</p> <p>The total annual cost to the police, nationally, is estimated at £725K.</p> <p>Breach of a Violent Offender Order will be a criminal offence. It is estimated that this will have an average impact of 20 prison places per year.</p>								
Premises Closure Orders	<ul style="list-style-type: none"> Gives the police and local authorities an opportunity to act swiftly and decisively to control nuisance behaviour and offer some respite to suffering neighbours. Provides an opportunity through which to engage the perpetrators in support and rehabilitation which they may have refused until that point. the use of the power will send a positive signal that anti-social behaviour will be tackled and not tolerated across all housing and property tenures and that the protection of the wider community is paramount. It will allow some respite for the neighbourhood and encourage visitors and business back in to the area. 	<p>The annual cost of an estimated 100 closure orders a year is</p> <table data-bbox="1375 799 1951 943"> <tr> <td>Police</td> <td>£135K</td> </tr> <tr> <td>Local Authorities</td> <td>£250K</td> </tr> <tr> <td>HMCS</td> <td>£49K</td> </tr> <tr> <td>Legal Services Commission</td> <td>£292K</td> </tr> </table>	Police	£135K	Local Authorities	£250K	HMCS	£49K	Legal Services Commission	£292K
Police	£135K									
Local Authorities	£250K									
HMCS	£49K									
Legal Services Commission	£292K									

<p>Offence of creating nuisance/disturbance on NHS premises</p>	<ul style="list-style-type: none"> • Staff are able to carry out their duties unhindered by incidents of nuisance and disturbance. • An improvement in absenteeism, morale, recruitment and retention. • Prevention of more serious incidents. 	<p>The annual costs of the new offence are estimated as</p> <ul style="list-style-type: none"> • £363K cost to police • £701K cost to HMCS • £174K cost to CPS • £75K cost to LSC <p>There is also a £270K training cost to NHS.</p>				
<p>Statutory one year review of juvenile Anti Social Behaviour Orders (ASBOs)</p>	<ul style="list-style-type: none"> • For young people, a one year review is an important safeguard that will ensure that they are receiving the support they need to prevent them breaching the terms of their ASBO and causing further harm to the community. 	<p>The annual cost of additional court hearings to vary prohibitions or discharge orders following review is estimated at</p> <table border="0"> <tr> <td>HMCS</td> <td style="text-align: right;">£41K</td> </tr> <tr> <td>Legal Services Commission</td> <td style="text-align: right;">£72K</td> </tr> </table>	HMCS	£41K	Legal Services Commission	£72K
HMCS	£41K					
Legal Services Commission	£72K					
<p>Police Misconduct and Unsatisfactory Performance Procedures</p>	<ul style="list-style-type: none"> • Replacing the existing procedures to provide a fair, open, proportionate and timely method of dealing with misconduct issues. • Encouraging a culture of learning and development for individuals and the organisation. • Encouraging line managers to make use of the procedures to improve both individual and, by extension, force performance and service delivery. • Early assessment of allegations to ensure that the response is proportionate, timely and fair. • New procedures could lead to non cashable savings of £10 million per year. 	<p>There will, be some initial training/implementation costs which will be met by the National Policing Improvement Agency.</p>				

Special Immigration Status	<ul style="list-style-type: none"> • Will send a clear signal that foreign criminals and terrorists cannot expect to secure a settled status in this country. • The reporting and residency conditions, by ensuring contact management with the Border and Immigration Agency, will improve public protection and facilitate the eventual removal of these people from the United Kingdom in due course. 	The cost to the Borders and Immigration Agency is estimated at up to £1.1M a year.
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Youth Rehabilitation Order

1. Purpose and intended effect

Objective

The creation of a new statutory community sentence for young offenders. The Youth Rehabilitation Order (YRO) would be available as a sentence for all suitable offenders aged under 18 when convicted of an offence. It would replace the eight existing juvenile community sentences with a single generic sentence. This will consist of a menu of interventions including programmes, reparation, treatment for mental health issues and drug misuse, supervision and curfew, which the court can choose from to suit the individual offender.

For those offences that would be imprisonable in the case of an adult, the court would be able to sentence the young offender to a YRO with intensive supervision and surveillance (ISS). This would be the most onerous non-custodial sentence available for those under the age of 18 and would be imposed as a last resort before a custodial sentence.

Background

YRO

The Crime and Disorder Act 1998 established the principal aim of the youth justice system as the prevention of offending by children. This primarily involved the setting up of the Youth Justice Board and the establishment of YOTs.

In September 2003 the Home Office published the Green paper *Youth Justice: The Next Steps (YJTNS)* as a companion document to *Every Child Matters*. The paper set out a number of proposals relating to the way in which the current youth justice system could be changed to deal more effectively with children and young people aged between 10 and 17 inclusive who commit criminal offences.

The Government response to the consultation, published in March 2004, outlined the belief that sentencing options needed to be made simpler and more flexible. Respondents were generally supportive of the idea of a simplification of juvenile sentencing. Following the example of the new adult generic community sentence (CJ Act 2003) and in light of responses to the consultation, Ministers decided that they would welcome proposals for a generic juvenile community sentence in order to simplify juvenile sentencing while improving the flexibility of interventions.

ISSP

The existing Intensive Supervision and Surveillance Programme (ISSP) is the most rigorous non-custodial intervention available for young offenders. As the name suggests, it combines unprecedented levels of community based surveillance with comprehensive and sustained focus on tackling those factors that contribute to the young person's offending behaviour. It targets the most prolific and serious young offenders. Most ISSPs last for six months although twelve month ISSPs are being piloted in some areas.

There is no such thing currently as an 'ISSP Order' as the programme is merely an administrative scheme. An evaluation of ISSP has been undertaken by the University of Oxford. Interim findings published in Autumn 2005 showed that

although re-offending rates remained high (91%) the programme had had an impact in reducing the seriousness and frequency of offending.

Risks

The YRO represents a risk based approach to community sentencing with requirements attached based on the seriousness of offending behaviour and the individual need of the young offender. The YRO will therefore be a more focussed sentence directly addressing many of the issues that contribute to offending. Without the creation of the YRO with ISS young people may not be receiving interventions appropriate to their need. A major policy aspiration for the new sentence is the reduction of young people who are sent to custody. Without the introduction of the YRO there is a risk that the number of young offenders sent to custody would increase. The introduction of YRO with an ISS element will also provide an alternative to custody, which the courts must consider, therefore meaning that only after careful consideration will a young person be sent to custody. To support this position, statutory restrictions will be put upon the court to preserve the intensive package of requirements as a last step before custody. We believe that the ISS coupled with a more risk based and offender focussed sentence may help to reduce this risk.

2. Options

Do nothing

If nothing was done, the ISSP would not be able to function to the extent proposed, as an alternative to custody.

Alternatives to legislation

Intensive Supervision and Surveillance is an integral part of the proposed youth sentencing structure to help reduce any escalation to custody. The current ISSP is attached to the existing community Supervision Order or Community Rehabilitation Order with a Curfew Order and these will be repealed when the new generic community sentence, the Youth Rehabilitation Order, is introduced. ISS can be attached to the YRO as a last stop before custody.

Legislative proposal

The creation of the YRO/ISS will help to address the problems of persistent and serious offending amongst juveniles. The YRO will normally last for a maximum of 12 months but with the option of extending to three years, the current maximum length of a Supervision Order. The YRO will be the standard community sentence used for the majority of young offenders and sentencers would be expected use the YRO on multiple occasions, adapting the menu as appropriate. The Reparation Order and the Referral Order will remain separate interventions below the YRO

The Intensive Supervision and Surveillance Requirement (YRO with ISS) is being included in the YRO for those serious and persistent young offenders who might be on the cusp of custody. It is based on the current Intensive Supervision and Surveillance Programme (ISSP). The Detention and Training Order will remain as an available sentence for serious or persistent offenders where the intensive YRO has already been tried.

3. Benefits and Costs

Sectors and groups affected

This provision does not have any impact on the private or voluntary sector. ISS will be implemented and managed by the Youth Offending Teams. No additional resources will be required and use of ISS will be resource driven.

Benefits/Costs

A more risk based approach to sentencing young offenders which will focus on individual need such as treatment for substance misuse, education, curfews while also addressing offending behaviour. The YRO may lead to a reduction in the use of custody for young offenders, particularly those offenders who would benefit from early and intensive supervision in the community rather than in custody. There are wider benefits to society as the magnitude and quantity of crimes by offenders who complete the programme are reduced.

Extra costs from the implementation of the YRO

There may be further costs, over and above the current level of specific ISSP funding, resulting from increased use of the Intensive Supervision and Surveillance requirement.

Training Costs

YJB have bid for one off training costs of £669,000 based on an Open University delivered course which is cascaded to the majority of YOT members

4. Small Firms Impact Test

There will be no impact upon small firms as the costs fall entirely on the public sector

5. Competition assessment

There will be no impact upon competition as the costs and benefits accrue entirely to the public sector

6. Enforcement, sanctions and monitoring

Monitoring and evaluation procedures exist for current community sentences and for ISSP and these will be carried forward to the YRO with ISS. These include a rolling programme of assurance reviews which are overseen by a project board.

7. Consultation

This provision was outlined in the consultation paper *Youth Justice – The Next Steps* published in September 2003. Respondents were generally supportive of the idea of simplification of juvenile sentencing. Magistrates felt that more than one community sentence was required in order to emphasise progressively more severe punishments. Some felt there was a risk of escalation to custody. To counter this we have set out clear criteria for when a YRO with ISS should be considered.

8. Implementation and Delivery Plan

We will work with the Youth Justice Board and through them Youth Offending Teams to ensure that the YRO is implemented successfully. We have already started

preparing for possible implementation and have discussed training and resource needs with stakeholders including the YJB and sentencers. The YJB have already identified a training provider, The Open University, and submitted proposed training costs. We will allow an appropriate period of time to elapse between Royal Assent and commencement to allow proper training of YOT staff and sentencers to take place. We are confident that we can build on the experience that has already been gained in implementing the adult generic community sentence and, subject to Bill timings, YOT staff and sentencers should be trained and ready to implement the YRO from early 2009 at the very latest.

We will work with the YJB, YOTs and sentencers to produce guidance appropriate to the new sentence. Currently the policy intention is to have non statutory guidance to allow greater flexibility in meeting the needs of the YRO. We will ensure that this guidance is produced in consultation with practitioners to ensure that it is useable and relevant at the point of delivery.

The YJB currently produce annual statistics which include community sentences and the use of custody. The implementation of the YRO will need to be monitored carefully to ensure that it is being used appropriately and that there are no issues of disproportionality or up-tariffing leading to a greater use of custody. The YJB will continue to monitor the youth justice system and will produce annual statistics which will include the new community sentence and we will explore with them how we can best capture statistics relevant to these issues. We would like to see a breakdown of how sentencers use the requirements of the YRO in different cases, including for different groups and offences. We are determined to guard against the disproportionate use of requirements as a crucial policy objective is to reduce the number of young people sent to custody.

9. Post Implementation Review

The YRO will represent a complete overhaul of the current community sentencing framework for young offenders. It will represent a new risk based approach to dealing with young people before the courts and provide the opportunity to tailor requirements to individual circumstances and offending behaviour, it will also offer the opportunity to keep young people out of custody.

We recognise that such a change will require monitoring and reviewing if we are to achieve our policy objectives. The YJB will monitor the implementation and effect of the YRO as part of its statutory responsibilities. They will also collect data on the use of the YRO and the use of custody as part of its annual statistics. We will discuss with the YJB the most appropriate way of ensuring that our policy objectives are met but our view is that a full review/evaluation should take place after an appropriate period of time.

As part of any review we would look to establish an overview of how the YRO was being used and whether requirements are being attached in an appropriately risk based manner and according to need. We will want to establish whether sentencers are following YOT recommendations as part of the Pre Sentence Reports. We note that currently members of BME communities are subject to more onerous community sentences than white people and we will want to review whether the more risk based and individually tailored approach offered by the YRO is having any effect on this issue. We will want to review the impact that the introduction of the YRO has had on the numbers of young people sent to custody and ensure that the ISS element is being used properly and in the correct circumstances to guard against up-tariffing. Significantly we will also want to review what effects the YRO has had on reducing

re-offending rates. A review will not be statutory but will form part of the YJBs role in monitoring the effectiveness of the youth justice system.

Summary and recommendation

To introduce a generic community sentence for offenders under the age of 18; to further the use of intensive supervision and surveillance for those young offenders most at risk of custody, thereby reducing the rate and seriousness of their offending; to make less use of costly custodial places in line with Government policy of sending juveniles to custody only as a last resort.

Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice
June 2007

Contact Details

Joe Murphy
Youth Justice & Children Unit
Ministry of Justice
2 Marsham Street
London
SW1P 4DF

Tel No: 0207 035 1315

Email: Joseph.Murphy2@Justice.gsi.gov.uk

Regulatory Impact Assessment

1. Criminal Justice and Immigration Bill – Sentencing and Appeals Provisions

1. Indeterminate Sentences.
2. Restriction on imposing suspended sentences.
3. Early Release of prisoners liable for deportation.
4. Fixed Term Recalls.
5. Minimum period of unpaid work for breach of a community sentence.
6. Allocation of offences triable either way.
7. Trials or sentencing in absence of accused in magistrates' courts.
8. Test for quashing convictions.
9. Abolition of discount for unduly lenient sentences.

2. Purpose and intended effect

Objective

The objective of these provisions is to reduce re-offending and protect the public, provide justice for all and increase confidence in the justice system.

These provisions will deliver the overall objective by:

- building public confidence in the sentencing framework by imprisoning serious and dangerous offenders while others receive tough and effective community sentences;
- ensuring that prison and probation resources are targeted at serious and violent offenders;

Background

The Government has changed the face of penal policy over the last ten years. In particular it has

- focused policy on ensuring that the dangerous offenders remain in prison until they cease to be a danger,
- increased the range of punishments available,
- recognised the need to do all we can to reduce re-offending – by significantly increasing drug treatments and offending behaviour interventions; more work with offenders in prison and on release, tougher community penalties, more unpaid work, more restorative justice and greater monitoring and support for those who have offended when they are in the community, in particular through the introduction of the Multi-Agency Public Protection Arrangements.

Re-offending rates have fallen by around two per cent between 2000 and 2004 for adult and young offenders, increased number of dangerous offenders off the streets, and a resultant contribution to reduction in crime. These provisions form part of this ongoing work.

The sentencing and appeals provisions in the Bill are outlined below in more detail.

1. Indeterminate Sentences

At present, when judges award a discretionary life sentence (and other indeterminate sentences), they must explain the minimum term for punishment purposes (the “tariff”) that the offender must serve. To calculate this (except in murder cases), they decide on the equivalent determinate sentence and then halve it to arrive at the tariff, because under a determinate sentence the offender is released at the halfway point on licence. Statute obliges courts to take account of the halfway release arrangements when setting tariffs.

In fact, very few offenders on indeterminate sentences will be released when their tariff expires – it is just the earliest point at which their release can be considered by the Parole Board. But it gives the public the impression that dangerous people might be released after a time that in some cases seems disproportionately short. The Government believes that the courts should have the discretion to set higher tariffs, that do not take account of early release requirements, in particularly serious cases. This provision allows courts to reduce the notional determinate sentence by less than half, or not at all, when setting a tariff for an exceptionally serious case where a discretionary life sentence is being imposed.

2. Restriction on imposing suspended sentences

The Criminal Justice Act 2003 introduced a new form of suspended sentence which enabled the courts to order an offender to undertake certain requirements in the community, such as an unpaid work or curfew requirement. If the offender failed to comply with such requirements or committed another offence within the period of suspension he or she would then be liable to serve the custodial part of the original sentence.

The policy intention behind the new suspended sentence was that it would be used by the courts in cases where they might previously have used a suspended sentence, or a short custodial sentence. However, monitoring of the use of new sentence suggests that instead the courts are making substantial use of the suspended sentence for summary-only offences which previously would have received community sentences. To ensure that suspended sentence orders are used, as intended, for offences that clearly meet the custodial threshold, the Bill includes a provision to ensure that these orders should in future apply to indictable offences and either way offences (regardless of the place of trial), but not to summary only offences.

3. Early Release and Early Removal of prisoners liable to deportation

Under the provisions of the Criminal Justice Act 1991, in contrast to the position of ‘domestic’ prisoners serving 4 years and over under the terms of the Act, the Parole Board currently plays no part in determining eligibility for

parole of foreign national prisoners who are liable to deportation or removal from the United Kingdom. In the case of *Hindawi*, the House of Lords ruled that the provisions of the Act were discriminatory and incompatible with the ECHR and that such prisoners should be afforded the same rights as 'domestic' prisoners by having their cases reviewed by the Parole Board. The Government is required to act to ensure that provisions are compatible with the ECHR.

The Early Removal Scheme for foreign national prisoners which allows the removal of foreign national prisoners liable to deportation or removal who have served a specified minimum portion of their sentence, has had a low take up rate so far. The Government is looking for more effective ways of focusing the existing prison estate on those who should be in the prison system, including doing more to return foreign prisoners to their country of origin.

4. Fixed Term Recalls

One limb of the reforms made by the Criminal Justice Act 2003 was to place all offenders serving sentences of 12 months or more on licence from the point of their release from prison to the end of their sentence. An offender who breaches the terms of his or her licence is liable to be recalled to prison. The decision whether to recall is made administratively, but is then subject to review by the Parole Board which then considers whether to set a re-release date for the prisoner or a date for a further review of detention.

There has also been an increase in the number of recalled offenders in prison, reflecting the longer periods for which recallees are being held before they are re-released. It is important that dangerous offenders are kept in prison until they no longer pose a danger, and that the Parole Board can focus on assessing their risk. However, the recall population has increased from around 3,400 in April 2005 to nearly 5,000 in February 2007, an increase of 47 per cent.

5. Minimum period of unpaid work for breach of a community sentence

Currently 40 hours is the minimum period of unpaid work which may be imposed for breach of a community order. This would apply to adults and to the juvenile Youth Rehabilitation Order (YRO). The minimum number of hours of unpaid work that may be imposed at the point of sentence would remain at 40.

Where a community order already contains an unpaid work requirement, there is no minimum to the number of hours that may be imposed on breach to make the order more onerous, but where there was no unpaid work requirement originally, the minimum number of hours that may be added for breach is 40. As a penalty for breach this can be seen as disproportionately severe and not in the spirit of the SGC Sentencing Guidelines, which state that the primary objective of breach action should be to ensure that the

requirements are completed. The result may be that offenders are not punished by unpaid work when they should be.

6. Allocation of offences triable either way

Schedule 3 to the Criminal Justice Act 2003 amends the procedure to be followed by magistrates' courts in determining whether cases triable either way should be tried summarily or on indictment, and provides for the sending to the Crown Court of those cases which need to go there. The new procedures are designed to enable cases to be dealt with in the level of court which is appropriate to their seriousness, and to ensure that they reach that court as quickly as possible. These provisions give effect to a number of recommendations from Lord Justice Auld's *Review of the Criminal Courts*, including making magistrates aware, when they determine allocation, of any previous convictions of the defendant; removing the option of committal for sentence in cases which the magistrates decide to hear; allowing defendants in cases where summary trial is considered appropriate to seek a broad indication of the sentence they would face if they were to plead guilty at that point; and replacing committal proceedings and transfers in serious fraud and child witness cases with a common system for sending cases to the Crown Court, based on the present arrangements for indictable-only cases.

These provisions have not (with very minor exceptions) been commenced, because of concerns about resource implications. To meet these concerns and enable Schedule 3 to be implemented, the Bill will amend it by reinstating a general power to commit for sentence.

7. Trial or sentencing in absence of accused in magistrates' court

Magistrates have a discretion to try defendants in their absence where the defendant fails to appear, but the court cannot sentence the defendant to custody in absence

The Bill creates a presumption that adult defendants will be tried in absence where the defendant fails to appear at trial and the magistrates' court is not aware of a reasonable excuse for failing to appear. In addition, the magistrates' court will be allowed to sentence a defendant to custody in his absence when the defendant has been bailed to appear at trial. The Government believes that these provisions will encourage defendants to appear at trial, as it is their duty to do.

8. Test for quashing convictions

At present, convictions may be held to be 'unsafe' and quashed because of a defect in the proceedings, even where there is no doubt that the appellant was guilty of the offence of which he was convicted. The Government made clear in a consultation paper published last year that it was committed to changing the law so that convictions should not be quashed if the Court of Appeal were satisfied as to the appellant's guilt. The Bill gives effect to that commitment: it provides that in such circumstances a conviction should no

longer be quashed as unsafe, unless to dismiss the appeal would contravene the appellant's Convention Rights. In addition, express statutory provision is made for the Court of Appeal to refer to the Attorney General serious misconduct in the investigation or prosecution.

9. Abolition of discount for unduly lenient sentences

In its paper 'Rebalancing the criminal justice system in favour of the law-abiding majority', the Government set out its intention to change the rules on what happens when the Attorney General refers a case to the Court of Appeal for being unduly lenient. At present, the Court gives a discount to the offender on being re-sentenced to reflect the anxiety they are alleged to feel at going through a sentencing hearing a second time. This is referred to as the "double jeopardy" discount. This practice has already been abolished in murder cases (by means of the Criminal Justice Act 2003).

The 'Rebalancing' paper indicated that the Government now intended to abolish it for all life and unlimited sentences and to limit it for other sentences. Since the 'Rebalancing' consultation, the subject has been further reviewed. The Government has decided to abolish the discount in all life and unlimited sentence cases.

Rationale for Government intervention

The measures set out above are essential to improve the justice system for the public. This improvement will be measured by better outcomes in penal policy; fewer offenders re-offending; more effective public protection from dangerous offenders and a system where the public have confidence that the punishment fits the crime.

Devolution

These provisions extend to England and Wales.

3. Consultation

Within Government

Consultation on these provisions has taken place with the Office of Criminal Justice Reform (OCJR), Home Office, Ministry of Defence, Northern Ireland Office, The Attorney General's Office and the Parole Board

Public consultation

The Government published 'Rebalancing the criminal justice system in favour of the law-abiding majority' in July 2006. The paper set out the Government's strategy for putting law-abiding people and communities first; gripping offenders to cut crime, reduce reoffending, and protect the public; and introducing a simpler, swifter, fairer system with strong enforcement to

support rebalancing. This set out the Government's intention to abolish the discount for unduly lenient sentences.

In November 2006 the Government published its consultation paper "Making Sentencing Clearer". This paper sought views on changes to indeterminate sentences.

In September 2006 the Government published a paper "Quashing Convictions: Review of by the Home Secretary, Lord Chancellor and Attorney General"

The Government published "Penal Policy – a Background Paper" in May 2007 which sets out the Government's intention to introduce fixed term recalls and restrict the use of suspended sentences.

4. Options

1. Indeterminate sentences

Option 1: Do Nothing

Doing nothing risks a recurrence of very serious crimes receiving tariffs that seem disproportionately low, as occurred in the Sweeney case (Sweeney abducted and sexually assaulted a very young infant, and then drove extremely dangerously with the victim in the car – after the calculation of determinate sentence, reduction for guilty plea, and reduction by half to take account of early release arrangements, the tariff came to 6 years).

Option 2: legislate to enable judges to increase tariffs for public protection reasons

Several variations on this option were suggested in the consultation paper "Making Sentencing Clearer". All drew a negative reaction from consultees and there are clear practical difficulties in that courts would in effect be asked to assess future risk at the time of conviction.

Option 3: legislate to allow judges to disregard – in particularly serious cases - the requirement to take into account the normal early release arrangements.

This option would allow judges in the most serious cases to set a tariff that should maintain public confidence, without asking judges to play an inappropriate role in risk assessment. This is the Government's preferred option.

2. Restriction on imposing suspended sentences

Option 1: Do Nothing

Monitoring of the use of new sentence suggests that instead the courts are making substantial use of the suspended sentence for summary-only offences where previously they would have given community sentences. Doing nothing would mean that this practice would continue. Trends suggest that this would result in a permanent addition of 500 places to the prison population.

Option 2: Amend legislation

Amending legislation to ensure that these orders should in future apply to indictable offences and either way offences (regardless of the place of trial), but not to summary only offences, would ensure that suspended sentence orders are used, as intended, for the more serious offences. This is the Government's preferred option.

3. Early Release and Early Removal of prisoners liable to deportation

Option 1: Do Nothing

Doing nothing would make the Government in breach of its obligations under the European Convention of Human Rights.

Option 2: Amend legislation

The legislation could be amended in the following ways to ensure it is compatible with ECHR.

- Amending sections 46 and 50 of the Criminal Justice Act 1991 to enable foreign national prisoners serving 4 years or more to have their cases referred to the Parole Board for parole consideration,
- Providing that the Board's decision is binding on the Secretary of State in respect of those offenders serving up to 15 years, with the Secretary of State retaining the final decision to release in 15 year and over sentences,

Option 3: Amend Legislation and make amendments to the Early Removal Scheme.

In addition to making the amendments set out in option 2, amendments could be made to a number of restrictions on the categories of prisoner to bring in scope a larger proportion of prisoners. This would allow prisoners not liable for deportation (such as EU nationals who have treaty rights entitling them to reside in the UK) but who genuinely wish to resettle abroad, to be given the opportunity to benefit from the scheme. Those prisoners wishing to benefit from early removal to resettle would have to be able to demonstrate that, in the absence of supervision, they would not present an unacceptable risk to the public; the intention to resettle was genuine and not solely to evade

licensed supervision; and the prisoner had genuine ties in the country in which he would be resettling. To avoid discriminatory legislation, early removal for resettlement purposes would also have to be considered for UK nationals who could demonstrate a genuine intention to resettle abroad. This is the Government's preferred option.

4. Fixed Term Recalls

Option 1: Do Nothing

This would lead to an increase in the number of non-dangerous offenders in prison. Effective enforcement of licence conditions by the probation service, longer periods on licence for prisoners sentenced under the provisions of the 2003 Act, pressures on Parole Board processes and resources, and a low rate of re-release has seen the recall prison population increase from some 3,400 in April 2005 to nearly 5,000 in February 2007, a rise of 47%. Further rises are anticipated.

Option 2: Amend Legislation

It is imperative that where dangerous or violent offenders pose a risk while on licence they should be returned to prison and not re-released until it is safe to do so. But many recalled offenders do not fall into this category and take up scarce prison places that could be used more effectively for offenders who pose a greater risk to society. To ensure that prison and Parole Board resources are focused on protecting the public from dangerous and violent offenders, while at the same time continuing to send a clear message to all offenders that licence conditions will be rigorously enforced, legislation could be amended so

- that non-dangerous offenders who breach their licence conditions should be subject to recall to prison for a fixed period of 28 days;
- in such cases the role of the Parole Board be restricted to an appellate one: at the moment, a great number of recalls are not challenged and a mandatory review by the Board is nugatory work. The Board will continue to review the recall of dangerous offenders.

This is the Government's preferred option.

5. Minimum period of unpaid work for breach of a community sentence

Option 1: Do Nothing

The current minimum period of unpaid work for breach of a community sentence is 40 hours. This can be a disproportionately severe response to breach and conflicts with the Sentencing Guidelines Council guideline which says that the primary objective of breach action should be to ensure that the order is completed.

Option 2: Amend Legislation

Introducing a new minimum of 20 hours would be small enough to overcome the problem of disproportionate severity, but large enough to avoid the problem of short periods of unpaid work being administratively burdensome and expensive. This is the Government's preferred option.

6. Allocation of offences triable either way

Option 1: Do nothing

The Government would be unable to implement Schedule 3 of the Criminal Justice Act 2003 because of the risk that magistrates' courts would impose heavier sentences in cases that they were no longer able to commit to the Crown Court for sentence.

Option 2: Implement without amendment

Schedule 3 removes the magistrates' general power to commit cases tried summarily to the Crown Court for sentence. If this were implemented unamended, there is a risk that it might increase the demand for prison places if the magistrates were to impose, in cases that they had to sentence themselves, more severe sentences than the Crown Court would now give on committal for sentence.

Option 3: Make amendments to the provisions

The risk of magistrates imposing more severe sentences than the Crown Court would have done can be obviated by amending the Schedule to restore a general power to commit for sentence. The provisions could then be implemented without risk of increasing the demand for prison places. This is the Government's preferred option.

7. Trials in absence

Option 1: Do nothing

There is a considerable variation in the extent to which magistrates' courts in different areas make use of the existing power to try in absence.

Option 2: Create a statutory presumption in favour of proceeding in absence

Creating a presumption that defendants who fail to appear at trial without making the court aware of a reasonable excuse will be tried in absence (and allowing the magistrates to sentence a defendant to custody in absence, subject to appropriate safeguards) will encourage courts to proceed and make clear to defendants that they cannot escape justice by failing to appear in court. This is the Government's preferred option.

8. Test for quashing convictions

Option 1: Do nothing

Under the existing law, convictions may be quashed as unsafe even where the Court of Appeal have no doubt the appellant is guilty. This is damaging to public confidence in the criminal justice system and may also put the public at further risk.

Option 2: Amend the test

This would ensure that, where the Court of Appeal are satisfied that the appellant is guilty of the offence, the conviction should not be regarded as “unsafe” and should not be quashed unless the applicant’s Convention Rights had been contravened. This is the Government’s preferred option.

9. Unduly Lenient Sentence Discount

Option 1: Do nothing

This would enable to Court of Appeal to continue to make discounts in all cases except murder.

Option 2: Abolish the discount for life and unlimited sentences

This would enable the discount to be abolished in the most serious cases. The Court of Appeal would still be able to make discounts in other cases. This is the Government’s preferred option.

Option 3: Abolish the discount for life and unlimited sentences and limit it for other sentences, as proposed in the ‘Rebalancing’ paper

This would abolish the discount in the most serious cases and would modify it in other unduly lenient sentence cases. However, the possibility of limiting the discount has been identified as problematic - it is not clear how this might be achieved.

Option 4: Abolish the discount altogether

Abolishing the discount in all cases would give rise to additional pressures on prison resources.

5. Costs and benefits

Sectors and groups affected

Those directly affected will be defendants before the court and convicted persons subject to a custodial or community sentence. HM Courts Service, the legal profession, the probation service, charities and voluntary groups will also be affected.

Benefits and Costs

Costs and Benefits are shown in the table below.

	Key Benefits of Preferred Option	Costs
Discretionary life Sentences	<p>Gives more discretion to the judiciary to ensure that those who commit very serious offences will not be released after a short time in prison</p> <p>Strengthen public confidence by increasing tariffs for very serious offences.</p>	It is anticipated that this provision would increase the prison population by some 25 places.
Restriction in imposing suspended sentences	<p>Ensure that prison places are reserved for the more serious offences.</p> <p>A saving of some 400 prison places.</p>	
Early Release and Early Removal of prisoners liable to deportation or removal	<p>A saving of around 60 prison places</p> <p>Ensures that the UK law is compatible with the ECHR, following the House of Lords judgment in the case of <i>Hindawi</i>.</p> <p>Improve the operation of the Early Removal Scheme, which allows the removal of foreign national prisoners liable to deportation who have served a specified minimum portion of their sentence, to bring into scope a larger proportion of prisoners.</p>	

Fixed Term Recall	<p>Ensure that prison and Parole Board resources are focused on protecting the public from dangerous and violent offenders, while at the same time continuing to send a clear message to all offenders that licence conditions will be rigorously enforced</p> <p>A saving of up to 1,000 prison places.</p>	
Minimum period of unpaid work for breach of a community sentence	This provision should be cost neutral	
Allocation of offences triable either way	This provision should be cost neutral	
Trials in absence	<p>Court time may be saved as magistrates deal with more cases at the scheduled time</p> <p>The proportion of defendants failing to appear may be reduced, saving court time.</p>	In the short term there may be an increase in appeals and rehearings of cases where a defendant has been convicted and/or sentenced in absence.
Amending the test for quashing convictions	Some appellants would no longer have convictions quashed where the Court of Appeal were satisfied that the appellant was guilty of the offence.	<p>A maximum of 20 additional prison places</p> <p>Any additional costs arising from investigating misconduct that the Court of Appeal refer to the Attorney General</p>
Abolition of discount for unduly lenient sentences	Reassuring victims, relatives and the public generally that the Crown Court's sentencing errors are fully, not partially, corrected	Around 4 prison places per annum

Administrative Burdens and Simplification

The only implications that the Bill has for the private sector, in this case, the legal profession, is the need to become familiar with the new sentencing and appeals provisions and how this might affect their clients.

This is considered a one off burden as with any change to guidance and procedures etc which will be resolved as the changes become familiar. In general the Bill is not designed to simplify but has clarified in some aspects sentencing practices and removes ambiguities.

6. Small Firms Impact Test

Solicitors and barristers are affected by the changes even if a one off by becoming familiar with and having to understand the new sentencing provisions

7. Competition assessment

The provision will not affect competition.

8. Enforcement, sanctions and monitoring

These provisions will be monitored by the Ministry of Justice. Sentences imposed in unduly lenient sentence cases are routinely monitored by the Attorney General's Office.

9. Implementation and delivery plan

These measures will be implemented by Commencement Order and their implementation announced.

10. Post-implementation review

These provisions will be reviewed to ensure that they are fully effective

11. Summary and recommendation

It is recommended that the Government's preferred options are taken forward in the Criminal Justice and Immigration Bill.

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Rt Hon David Hanson MP
Minister of State
Ministry of Justice
July 2007**

Contact point

Catherine Webster
Criminal Justice Bill Team
Ministry of Justice
2 Marsham Street
SW1P 4DF
0207 035 1299
Catherine.Webster@justice.gsi.gov.uk

Regulatory Impact Assessment

1. Title of Proposal

Extension of Referral Orders

2. Purpose and intended effect

Objective

To reduce re-offending by young people and potentially lower the use of custody. This will be achieved by extension of the use of referral orders by:

- Amending the compulsory and discretionary referral conditions to remove the current disqualification for a referral order where the young person has been bound over to keep the peace or to be of good behaviour or has been given a conditional discharge.
- Extending discretionary referral orders to a second conviction guilty plea, where a referral order has not previously been given.

Increasing the use of the referral order in this way will reduce offending as the referral order has the lowest re-conviction rate of any community based juvenile sentence at 44.7%. Reducing re-offending will, in the longer term, reduce the use of custody.

Background

We need the prosecution of youths to be as effective as possible in holding them to account for their actions, protecting the public and giving victims a voice. The extension of the mandatory and discretionary provisions for referring young offenders to community panels means that referral orders would be available as a sentence for all suitable offenders aged under 18 who plead guilty on their first and/or second conviction for an offence, if they have not previously received a referral order. The provisions would remove some of the restrictions imposed by s16 & 17 of the Powers of Criminal Courts (Sentencing) Act 2000 and give sentencers greater flexibility in sentencing young offenders for whom the sentence is not fixed by law and for whom discharge, hospital orders and custody are not an option.

Referral orders were introduced in the Powers of Criminal Courts (Sentencing) Act 2000 and implemented nationally on 1 April 2002. The legislation created a new sentence of referral to a Youth Offender Panel. Referral is available for young people convicted for the first time who plead guilty. Orders are made for between 3-12 months. The panel is led by trained volunteers from the local community operating on restorative justice principles which involve the young person taking responsibility for the consequences of their offending behaviour and making restoration to the victim.

An offender given a referral order has to meet with a referral panel established by a youth offending team specified by the court and agree a contract with them. The offender then has to attend panel meetings as required and comply with the agreed contract, which will set out a programme of behaviour aimed at reducing re-offending. Breach of the requirements can lead to referral back to court which will have the option of resentencing the offender.

The aim of referral orders is to give young people the opportunity to wipe the slate clean after completing the contract and to encourage young people to take responsibility for their offending behaviour, participate in rehabilitative activity and to be reintegrated into the law abiding community. This process results in greater involvement of local communities and businesses in the youth justice system and extends the collaboration between young offender teams and their partner agencies.

Referral orders are now the main intervention for young offenders who plead guilty on their first court appearance and account for around a quarter of all youth justice sentences. The reconviction rate for offenders who have received a referral order is 44.7% which is significantly better than for any other juvenile sentence,

Rationale for Government Intervention

This proposal represents a low risk option as the referral order has a proven track record of being the best performing community sentence. Therefore greater use of the referral order is expected to provide better outcomes for juvenile offenders than the alternatives.

3. Consultation

Extending referral orders to a second conviction was part of the general consultation exercise as part of Youth Justice: the Next Steps (available at: <http://www.homeoffice.gov.uk/documents/2003-cons-youth-justice-next-ste/> for the aborted Sentencing and Youth Justice Bill.

Within Government

The Home Office has consulted the Youth Justice Board, Department of Constitutional Affairs and the Crown Prosecution Service.

Public consultation

Informal consultation was undertaken with the Magistrates' Association, Justices Clerks' Society and Youth Offending Team Managers. The Government response to the consultation, published in March 2004, available on Home Office web site at:

www.homeoffice.gov.uk/justice/sentencing/youthjustice/index.html, and <http://www.homeoffice.gov.uk/inside/consults/summaries/index.html>,

outlined the belief that sentencing options needed to be made simpler and more flexible. Respondents were generally supportive of the idea of a simplification of juvenile sentencing.

4. Options

Do nothing – Do not extend the use of referral orders:

If nothing were done the referral order would continue to be subject to the existing restrictions and there would be no change in the current use of sentencing options, including custody. While it delivers results in reducing re-offending, by not extending its use, the victims, wider society and young offenders themselves would not benefit from this approach.

Extend the use of Referral Orders

The extension of referral orders will enable more young offenders to have the opportunity of being dealt with by this effective disposal as proven by its re-conviction rate. Extending use of referral orders is therefore expected to result in a reduction in reconvictions and subsequent downstream savings –

5. Benefits and costs

Sectors and groups affected

These provisions do not impact on the private or voluntary sector other than the need for an increase in the number of trained volunteer panel members. Referral panel members are volunteers from the local community so there will be an additional demand for volunteers and a potential increase in workload for existing panel members.

Youth Offending Teams

Most additional resources will fall to youth offending teams who will manage the sentence and run the panels. Costs shown below are based on the number of hours input by youth offending team members to complete the referral order process.

Police/Courts/Legal Services

Extension of referral orders is not expected to result in an increase in the workload of the police or the courts as the predicted increase of referral orders is expected to be drawn from existing disposals. There will therefore be off-setting reductions in the use of other community sentences (currently action plan orders, reparation orders, supervision orders, community rehabilitation orders/community punishment and rehabilitation orders) and a reduction in the use of fines or conditional discharges.

Victims of crime

There would be an expected benefit to victims of crime because of the restorative justice focused approach of referral orders. Where the victim wishes, offenders are expected to apologise for their actions and to offer reparation as part of their referral contract.

Youth Offenders

There would be a benefit to young offenders made subject to referral orders as they are proven to be an effective sentence in reducing re-offending so helping the young offender reintegrate into the community successfully and remove or limit further involvement with the Criminal Justice System.

Benefits/Costs

Option 1: Do Nothing

By not extending the use of referral orders, associated costs and potential increase in workloads would not be generated. The potential benefits of reducing re-offending and the reduction in future costs would not be realised.

Option 2: Extending the use of referral orders

A greater use of referral orders is expected to reduce re-offending based on the reconviction rate of 44.7% as published in '*Re-offending of juveniles: results from the 2004 cohort, Reconviction Analysis Team, RDS-NOMS, June 2006*', table A5, p.18. This is significantly better than the other community sentences with the next best performing sentence, a discharge, having a reconviction rate of 57.6%.

Implementing powers for extending referral orders will produce increased cost at the outset because they largely will be replacing orders with less expensive unit costs. The savings produced by reduced reconviction should offset the increased costs in later years.

The additional costs are Youth Offending Team (YOT) costs reflecting the increase input required from them. Court costs will, initially, remain unchanged as the offenders would still have appeared but received alternative sentences. Over time the expectation is that overall costs will fall with a reduction in re-offending, but these savings will take time to accrue.

The referral order unit cost is estimated at £1,879. It is estimated that there will be 5,000 new referral orders as result of these changes: these will be expected to 'substitute' in the following proportion for alternative court orders:

40% for Action Plan Order (APOs)=	2000
40% for Reparation Orders (Rep Os)=	2000
5% for Supervision Orders (SOs)=	250
10% for Community Rehabilitation Order/Community Punishment and Rehabilitation Order (CRO/CPRO)	
=	500
5% for fines or conditional discharges =	250

Differential cost- i.e. the cost of the change produced by the extending referral order powers- is calculated by subtracting the unit cost of the 'substituted' order from the unit cost of the referral order which has 'replaced' it:

Differential **cost** of 2,000 replaced APOs = 2000 x (£1879-£1458)=2000 x £421 = +£842000

Differential **cost** of 2000 replaced Rep Os = 2000 x (£1879-£1600)= 2000 x £279 = +£558000

Differential **saving** of 250 replaced SOs = 250 x (£1879-£4059)= 250 x -2180 = -£545000

Differential **saving** of 500 CRO/CPRO = 500 x (£1879-£2069) = 500 x -£190= -£95000

Differential **cost** of 250 fines/nil cost disposals= 250 x £1879 = +£469750

Total net overall Cost = £1,229,750

Note:- unit cost estimates provided by YJB based on costs to YOTs

Referral orders perform significantly better (44.7%) than alternative court disposals, and it is therefore reasonable to predict that the additional referral orders made as a result of the new discretionary powers will reduce reconvictions. Based on reconviction data from Home Office Statistical Bulletin, Re-offending of juveniles: results from 2004 cohort online report 10/06, table A5, p.18 these downstream savings can be estimated as follows:-

- 5000 additional Referral Orders expected to replace 2000 APOs, 2000 reparation orders, 250 supervision orders, 500 community sentences, 200 fines, 50 discharges
- 2000 APOs (66.9% reconviction rate) produce 1336 reconvictions, replaced by only 894 reconvictions following ROs (44.7% reconviction rate) - reduction in reconviction 442
- 2000 reparation orders (69.2% reconviction rate) produce 1384 reconvictions, replaced by only 894 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 490
- 250 supervision orders (73.6% reconviction rate) produce 184 reconvictions, replaced by only 112 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 72
- 500 community sentences (67.2% reconviction rate) produce 336 reconvictions, replaced by only 224 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 112
- 200 fines (63.1% reconviction rate) produce 127 reconvictions, replaced by only 90 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 37
- 50 discharges (57.6% reconviction) produce 29 reconvictions, replaced by only 23 reconvictions following ROs (44.7% reconviction rate)-reduction reconviction 6

Total number of reduced reconvictions = 1159 a year

Given that 44.7% reconviction figure for referral orders partly reflects that it applies exclusively to first time convicted offenders and that additional referral orders under new discretionary powers will apply exclusively to second time and more persistent offenders, it is reasonable to assume that a higher reconviction rate will apply to the 'new' referral order cases, differentiated by

ages. The statistical figures show that the reconviction rate is higher for males than females and that it is 10% more in the 10-14 than the 15-17 age groups.

- To take account of the above, assuming a reduction by half in comparative reconviction performance of RO against other disposals and reducing total reduced reconvictions by half, gives a **total estimated number of reduced reconvictions of 600 a year.**
- The 600 reconviction cases 'displaced' would have been dealt with by court disposals such as APO, reparation order, supervision order, etc at a cost of £2373 (conservative 'average' of the cost of these disposals to Youth Offending Teams), giving **Total estimated downstream savings = £1,423,800**

Taking costs into account, the total saving to Youth Offending Teams will be £194k per annum.

Compliance costs

There will be a one-off administrative cost for court staff, magistrates and youth offending teams in familiarising themselves with this change. This will be minimal: mainly time taken to read the guidance which will be issued with the regulations.

The test to be applied by the court is one which is simple to apply and easily understood. It will be clear from the charge sheet in court whether the offence is imprisonable or not.

As stated previously, there will be longer term cost savings for YOTs. The impact on the court costs is expected to be neutral. This should not lead to an increase in adjournments. About 5,000 cases a year will be affected following engagement with the young person and their legal representative.

A Equality Impact Assessment has been prepared. Race, gender and disability are routinely monitored.

Administrative Burdens and Simplification

There are no specific burdens created on the private sector by the extension of referral orders. The proposal is aimed at delivering the proven benefits of referral orders in youth offending. This process involves the public sector overall.

6. Small Firms Impact Test

There will be little or no impact upon small firms as the costs fall entirely on the public sector. As the increase in referral orders will come from existing disposals defence lawyers will not have additional demands placed on them.

7. Competition Assessment

There will be no impact upon competition as the costs and benefits accrue to the public sector.

8. Enforcement, sanctions and monitoring

Monitoring and evaluation procedures exist for current referral orders and these will continue.

9. Implementation and delivery plan

The Referral Order, underpinned by restorative justice principles, is a successful youth justice disposal. For this reason we, with the support of our partners and stakeholders, decided on legislative proposals to give sentencers power to extend its use to a larger population. The YJB has recently published an updated and improved initial training pack for youth offender panel volunteers, 'Panel Matters', together with a guidance to YOTs 'Volunteering in the Youth Justice System' on recruiting and managing volunteers. The YJB will also be publishing an Action Plan to improve the delivery of Referral Orders and the effectiveness of Youth Offender Panels. An updated MOJ/YJB guidance on Referral Orders and Youth Offender Panels for courts, YOTs and panel members will also be published in 2008 to ensure robust and effective implementation.

10. Post implementation review

The Ministry of Justice and the Youth Justice Board will continue to keep the operation of the referral order legislation under review. Researchers in the National Offender Management Service retrospectively monitor the reconviction rates for all youth justice disposals including referral orders. The YJB currently produce annual statistics for all youth justice disposals including referral orders. The YJB's Action Plan which will coincide with the possible implementation of the extension of referral orders will also help to underpin the implementation of this provision. We recognise that extending the referral order will require monitoring and reviewing to ensure that it is meeting its policy objectives. The YJB will continue to monitor the youth justice system and will produce annual statistics which will include the new community sentence. We will explore with the YJB how we can most effectively review and evaluate the effects of the extension of the referral order. We would expect that a full evaluation of the new provision would take place within three years of implementation.

11. Summary and recommendation

The extension of referral orders to a second conviction would give sentencers in both the Crown and magistrates' courts the flexibility they need in sentencing, which was not available with the current legislation. The initial potential costs of extending referral orders to a second conviction would be offset by downstream costs in the decrease in reconviction rates as well as the more expensive up tariff sentences.

12 Ministerial Sign Off

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice
June 2007**

Contact details:

Philippa Goffe
Youth Justice and Children's Unit
Tel: 0207 035 1319
Email: Philippa.Goffe@justice.qsi.gov.uk

Information Sharing for enforcement: extending magistrates' courts access to Department of Work and Pensions (DWP) Customer Information System (CIS) to show benefits information

1. Title of proposal

Information Sharing for enforcement: extending magistrates' courts access to Department of Work and Pensions (DWP) Customer Information System (CIS) to show benefits information

2. Purpose and intended effect of measure

i) Objectives:

To allow HMCS enforcement staff access to offenders benefit status to determine if a deduction from benefit (DB) order is the appropriate intervention and to increase the numbers of successful applications made to DWP.

To improve efficiency and business performance both in the courts and DWP, as DWP offices may see fewer applications made, freeing up resource to utilise in other priority areas.

To continue to build on the effective working between HMCS and DWP as a further step in modernising government and improving public services.

ii) Devolution:

These proposals apply to England and Wales

iii) Background:

Magistrates' courts staff have had an information sharing arrangement with DWP for fine enforcement since 1 April 2003. In 2004 the Department sought and received DWP approval for direct read only access to basic personal information held on the new Customer Information System (CIS) database that was being developed, for the purpose of tracking down those in default of court imposed penalties. Access to CIS was rolled out nationally between July and September 2005 and is an integral feature of the toolbox used by enforcement staff.

HMCS access to DWP CIS is established in statute in s125C magistrates' courts Act 1980. S125C was inserted by the s94 of the Access to Justice Act 1999. HMCS can only view name, address, date of birth and National Insurance Number details about the offender, and then only for the purpose of enforcing a warrant.

iv) Rationale for Government Intervention:

What are the identified problems?

In the Magistrates' Courts there are a number of enforcement steps which take place before a warrant is issued. It is not possible to access CIS at this point.

If an offender defaults on the payment of a fine, by law the first step the fines officer (the court officer responsible the administrative enforcement of fines) considers is a deduction from benefit order ('DB') or an attachment of earnings order ('AEO'). Currently Magistrates' Courts apply for deduction from benefit orders 'blind' i.e.

without knowing what benefit they are in receipt of. Once the application is made it is DWP's role to check their own systems to see if the offender is on the right sort of benefit or has too many other deductions in place. It can take a number of weeks for the decision to be returned by DWP, and there are regional variations in the time it takes them to respond. We believe a contributory factor to delay is the inability of the courts to filter out, at an early stage, those DB applications which will be rejected because the offender is not on the right benefit or there are other deductions in place. Based on a sampling exercise of 4 Areas conducted in February 2007 we think approximately 50% of all applications are rejected by DWP.

Delays have an impact on enforcement and thereby impinge upon the effectiveness and credibility of fines as a sentence.

What is the scale of the problems?

There is limited management information held or available centrally (except the overall figure which shows the number of active DBs). We consulted 4 HMCS areas seeking feed back on specific management information on Deductions from Benefits.

From the sample areas, it shows 69,446 fine accounts in default, of which 15.3% had an active DB. Applications being refused by DWP are approximately 42%. There are a number of reasons why an application may be declined, for example, not in receipt of benefit, in receipt of a non-deductable benefit, joint claim. This list is not exhaustive.

Will the problems identified worsen without government intervention? If so, how?

If HMCS does nothing, the levels of applications will continue to rise. This in turn will have an operational impact in that it may create further back logs in applications and the time taken by DWP to process applications from the courts. Currently it can take a number of weeks for a decision to be returned by DWP. These delays have an impact on enforcement and thereby impinge upon the effectiveness and credibility of fines as a sentence.

Making these necessary changes and providing the courts with access to benefits information before they engage DWP will be extremely useful - it has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

Have other methods been considered/used? If so, why do they fail to resolve the issues?

We have made efforts to minimise the delays to the DB application process through better working with DWP, including sharing best practice at national conferences and DWP-HMCS regional meetings. However we have identified the fundamental barrier here as legislative, so require new legislation to achieve the desired outcome.

3. Consultation

This is an intra-government policy change to improve the effectiveness and credibility of fines as a sentence and improve further payment rates. HMCS has the support of DWP, who agree about the potential to bring efficiency gains to both departments. We expect this will enable DWP to free up resource to use in other priority areas.

List of public consultations:

As this is about improving service delivery through modifying an existing system this has not been considered a matter for public consultation.

Key stakeholders involved in consultation:

Following an Office for Criminal Justice Reform (OCJR) consultation on deduction from benefits in November 2006, the majority of Local Criminal Justice Boards (LCJBs) fed back that access to an offenders benefits status would help them to make a decision about the appropriate enforcement intervention, on a case-by-case basis.

HMCS enforcement staff consistently tell us (e.g. During an Enforcement Champions Event in October 2006 and through on-going discussions) that the situation of making an application for a deduction from benefit without knowing if the application would be successful or not, is leading to unnecessary delays in collecting monies owed to the courts and also creating backlogs at DWP processing offices. Having access to benefits information will allow enforcement staff to avoid applications where they know the offender was not in receipt of a deductible benefit, this would enable enforcement staff to make an alternative intervention.

Where policy has changed as a result of consultations:

Deductions from benefits were already in use in magistrates' courts prior to 2003, under the Fines (Deductions from Income Support) Regulations 1992. The report on the evaluation of the Courts Act pilot sites emphasised the importance of increasing the level of deductions from benefits from £2.80 to £5 – a policy change that was delivered in December 2004. The Courts Act enabled DBs to be used more frequently and without offenders returning to court.

HMCS has seen a significant increase in usage DBs. Management information shows that since April 2004 to August 2006, there has been average increase of approximately 10% - 15% per quarter in the numbers of active DBs. The table below shows the most up to date management information available on numbers of active DBs.

Month	Total no. active DBs
Apr 04	20,300
Nov 04	28,300
Feb 05	33,400
May 05	39,400
Aug 05	44,400
Nov 05	No info
Feb 06	53,900
May 06	60,000
Aug 06	68,000

Information source:
Work and Pensions Longitudinal Study (WPLS)
Information Directorate -
Department for Work and Pensions (DWP)

4. Options

Currently magistrates' courts apply for deduction from benefit orders 'blind'. Once the application is made it is DWP's role to check their own systems to see if the offender is on a deductible benefit or has too many other deductions in place. It can take a number of weeks for the decision to be returned by DWP, and there are regional variations to this. A contributory factor to delay is the inability of the courts to filter out, at an early stage, those applications which will be rejected because the offender is not on the right benefit or there are other deductions in place or offender is not in receipt of benefit at all.

Option 1 - To do nothing and leave access to DWP CIS unchanged

To do nothing could mean delays remain or get worse as we expect the use of deduction from benefit orders to increase. Management information shows that since April 2004 (active DBs - 20,300) to August 2006 (active DBs - 68,000), there have been average increases of between approximately 10% - 15% per quarter in the numbers of active DBs.

Delays have an impact on enforcement and thereby impinge upon the effectiveness and credibility of fines as a sentence.

Option 2 - To increase HMCS access to include benefit status as a field but also enable access after sentencing but before default.

Making these necessary changes and providing the courts with access to benefits information before they engage DWP will be extremely useful - it has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

Compatibility of the provisions with the European Convention on Human Rights

This change does not give rise to any ECHR issues.

5. Costs and Benefits

Option 1 – To do nothing and leave access to DWP CIS unchanged

Costs

Current HMCS costs are calculated as a percentage of total hits and applied to the costs DWP are charged for Customer Information System (CIS) by their IT service provider. For the period 2006/07 HMCS paid DWP £147,734 for access to CIS at the current level. This equates to 0.17% of total accesses to DWP CIS.

Benefit

We will not incur a one-off development costs and increased running costs for access to DWP CIS. However, HMCS will probably see a continued rise in applications and numbers of deductions from benefits becoming active. This has the potential to cause backlogs within DWP offices, and courts waiting longer for decisions.

Option 2 – To increase HMCS access to include benefit status as a field but also enable access after sentencing but before default.

Costs

There will be two costs to HMCS to increase access to show benefit status, these are development cost and running costs:

• **Development Cost -**

HMCS would incur a one off cost for development to upgrade the current HMCS access of personal information screen to include access to benefit information. There are two options available:

- i. DWP's IT service provider could set up a hyperlink from HMCS current CIS screen to an already existing DWP application interface which lists all the benefits that an offender maybe in receipt of, including but not limited to the ones eligible for deduction. HMCS would provide staff training to sift out those offenders on a deductible benefit. This option would be the simplest and most cost-effective way to implement the change

ii. The alternative is for DWP IT service provider to develop an application interface uniquely for HMCS. This would enable HMCS to access benefit information from the current CIS screen to show if an offender was currently on a deductible benefit only. This screen would need to be further developed in 2008/09 when the new Employment Support Allowance (ESA) is introduced. This cost would be more substantial as a new application interface screen would have to be developed to allow access to deductible benefits for HMCS fines enforcement.

- **Running cost**

HMCS will pay DWP for the number of accesses made by courts staff to view the benefit status of an offender.

HMCS is currently working with DWP and their IT service provider to ascertain the one off development cost and on-going running costs for this enhanced access.

Benefit

This improvement will be extremely useful - it has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments. We anticipate there will be annual running cost savings for DWP and possibly HMCS.

Social Impacts

Enforcement takes place after a defendant has been found guilty of an offence and sentenced. Magistrates' courts do not routinely collect data on the ethnicity of defendants, but at a general level, statistics suggest that BME groups have a higher representation as users of the Criminal Justice System when compared to their representation as members of the population as a whole.

This policy will not have an adverse impact on minority groups. We are not changing the way the deduction from benefit system works. DWP will still process applications and make the final decision about whether a DB application is granted, subject to all the safeguards they have in place. This change is about enabling the courts to do their current work more effectively

6. Simplification and reducing administrative burdens

There will be no burdens to other sectors (private, voluntary) from this policy. This is simply an enhancement to an existing arrangement with DWP.

7. Small firms Impact Test

This is an intra-government change in policy to improve the effectiveness and credibility of fines as a sentence and improve further payment rates. It does not involve the private sector so there would be no effect on small firms.

8. Competition Assessment

The changes proposed by HMCS will enable courts to access an offender's benefit status before making an application for a deduction from benefit. This will sift out those offenders not in receipt of a deductible benefit or any benefit, which will allow court staff to make an alternative intervention. This will also save DWP time as they will not be receiving applications for deductions from benefits for offenders which they would have previously processed and declined.

The level of access we are aiming for here already exists in another part of the business, for the purpose of assessing applications for criminal legal aid, although there it is not on a statutory footing.

There is no private sector involvement in the provision or delivery of this service. There is no other possible provider for the deduction from benefit service, as the provision of state benefits is controlled exclusively by the state, therefore there is no scope for competition. HMCS is not proposing any fundamental changes to the DB system - this policy is simply an enhancement to existing arrangements with DWP.

9. Enforcement, sanctions and monitoring

A Memorandum of Understanding between DWP and HMCS took effect from 25th July 2005 and remains in force indefinitely. The memorandum of understanding sets out the relationship that exists between DWP and HMCS for access to CIS. It sets out the nature and standard of services they will provide one another.

Under the Period of operation in the memorandum of understanding, both parties may negotiate ad-hoc variations on individual services within the agreement. Where both parties agree an ad-hoc variation, the Agreement Co-ordinators shall revise and reissue the relevant paragraph(s) to internal staff.

HMCS will request information from DWP CIS in accordance with Section 125c of the Magistrates' Court Act 1980 as inserted by Section 94 of the Access to Justice Act 1999 and amended by paragraph 240 of Schedule 8 to the Courts Act 2003.

Under the Data Protection Act the DWP is permitted to provide information to other Government Departments as the law permits.

HMCS will treat the information received as confidential and will not permit disclosure to any other party except as required for the purposes of the Section 125c of the Magistrates' Courts Act 1980 as inserted by Section 94 of the Access to Justice Act 1999 and amended by paragraph 240 of Schedule 8 to the Courts Act 2003.

DWP retains the right to monitor and check all aspects of use of its system or the information taken from it by HMCS, their contractor/consultants to ensure that the security and integrity of the departments systems are maintained.

Clearly the lawful basis for access to information will be modified under the proposed new law and the memorandum will be modified to reflect this.

10. Implementation and Delivery Plan

HMCS does not envisage any procurement of IT to upgrade its access to benefit information. The upgrade will be to software on the hardware that is currently used to view offenders details on CIS. DWP will develop the screen that will enable courts staff to access benefit information.

As set out in the memorandum of understanding, DWP will provide HMCS with training material to assist with the training of certain HMCS staff prior to going live.

11. Post Implementation Review

We will continue to monitor management information to determine the effect this change has on the number of DB applications made, the proportion of those that are successful. We will remain in constant discussion with DWP and court staff regarding the effect the changes have on resources, in order to understand any efficiency gains.

12. Public Sector Impact Test

Impact on the public sector would be experienced by court staff and the DWP. For example, court staff make an application for deduction for benefit which is then submitted to DWP who then validate and administer on their IT system.

There will be improved efficiency in the delivery of service between government departments.

While HMCS staff will need training to support familiarisation with the changes to the IT system the change in the law would facilitate, in the long term they will benefit from a system which works more effectively, with fewer delays in the wider enforcement process.

By allowing HMCS access to benefit information before making an application for deduction from benefits, we estimate this will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

13. Legal Aid Impact Test

There would be no impact on legal aid expenditure. Court staff carry out the administrative process of making the application for a deduction from benefit to DWP who then validate and administer on their IT system. This administrative process occurs after a judicial decision has been made.

This policy change would not effect an individual's entitlement to state benefits, DWP rules and regulations set entitlement criteria. The change allows courts to view an offenders benefit status to check if the offender is in receipt of a deductible benefit or no benefits at all, before court staff make an application for a deduction from benefit to DWP.

14. Justice Impact Test

There would be no impact on the role of the Judiciary. Court staff carry out the administrative process of making the application for a deduction from benefit to DWP who then validate and administer on their IT system. This administrative process occurs after a judicial decision has been made.

This policy change allows courts to view an offender's benefit status to check if the offender is in receipt of a deductible benefit or no benefits at all, before court staff make an application for a deduction from benefit to DWP.

15. Court Impact Test

We estimate this link will lead to a 40% - 45% reduction in the number of unsuccessful applications for DBs made to DWP in England and Wales. Under the proposed changes, courts would check the benefit status of an offender before making an application, enabling court staff to save themselves and DWP valuable processing time, by sifting out offenders who are not in receipt of a deductible benefit or no benefit at all.

Court staff would know that applying for a DB is not a viable option because of the benefit status of the offender, thereby allowing courts to begin the process of instigating an alternative enforcement option with immediate effect.

16. Summary and Recommendation

To allow HMCS enforcement staff access to offenders benefit status at default will enable them to determine if a deduction from benefit is the appropriate intervention and should increase the numbers of successful applications made to DWP. We expect the change will improve efficiency and business performance both in the courts and DWP, as DWP offices may see fewer applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

This policy change will improve compliance with the orders and increase the amount of fine revenue collected. Ultimately the aim of this change is to improve the effectiveness and credibility of fines as a sentence.

Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Rt Hon Harriet Harman QC MP
Minister of State
Ministry of Justice
13 June 2007**

INITIAL PUBLIC SECTOR REGULATORY IMPACT ASSESSMENT

1. Title of proposal

Statutory basis for the Prisons and Probation Ombudsman (PPO).

The formal title of the post-holder will be 'HM Commissioner for Offender Management and Prisons'. However, like the Parliamentary Ombudsman, he will be a 'Commissioner' for legislative purposes but an 'Ombudsman' in daily parlance (the Parliamentary Ombudsman was established in statute as the Parliamentary Commissioner for Administration).

This measure will be part of the proposed Criminal Justice Bill. Some consequential amendments to the Parliamentary Commissioner Act 1967 will be required to remove from the Parliamentary Ombudsman's jurisdiction any matters which fall within the jurisdiction of the PPO. Minor consequential amendments to other legislation will be necessary to facilitate information sharing with other bodies. A measure to put the PPO on a statutory footing was previously included in the January 2005 Management of Offenders and Sentencing Bill, but the Bill did not progress due to the calling of the General Election.

2. Purpose and intended effect

To provide an enhanced structure for:

- adjudication of complaints from offenders and immigration detainees;
- scrutiny of deaths of prisoners, young persons detained in Secure Training Centres, residents of approved premises and those in immigration detention accommodation;
- supporting the Coroner's inquest in fulfilling the investigative obligation arising under Article 2 of the European Convention on Human Rights in relation to such deaths; and
- investigation of particular incidents or matters of concern on request by the Secretary of State.

The above functions are currently performed by the PPO on an administrative basis. The PPO has proved effective in performing his duties, but he does not possess formal powers of investigation and there is not a clear legal distinction between the Ombudsman and the Secretary of State.

In investigating a complaint, death in custody, or an incident of public concern, the statutory PPO will, if necessary, be able to draw upon robust formal powers to obtain evidence. It is likely that the statutory PPO would evoke these powers only very rarely but they could prove crucial in the event of non-cooperation of witnesses. A clear legal distinction between the statutory PPO and the Secretary of State and a remit enshrined in legislation will give the post-holder more clearly defined independence from the organisations he is empowered to investigate. However, a statutory basis should not fundamentally alter the way in which the PPO's current functions are performed or the level of service provided.

This measure will fulfil a longstanding commitment since 1998 to put the PPO on a statutory footing. This was confirmed in the 2002 Criminal Justice White Paper 'Justice for All'.

3. Options

Two options were considered, including that of taking no action.

1. Do nothing. The PPO will continue to perform his functions on an administrative basis, and as such there will be no additional impact on other Public sector staff. No groups will be adversely affected by this option.
2. Put the PPO on a statutory footing with formal powers of investigation. There will be no significant impact on other Public sector staff (there are currently very high rates of cooperation with the PPO's investigations and a statutory basis should not fundamentally alter the way in which the PPO's current functions are performed or the level of service provided). No groups will be adversely affected by this option.

Other bodies that provide services in relation to offenders on behalf of NOMS will come within the statutory PPO's remit in respect of those services, and so will be required to co-operate in the resolution of complaints and investigation of deaths and incidents of concern. These bodies would be expected to respond to recommendations made by the statutory PPO. As commissioning and contestability is fully implemented and the voluntary and private sectors take a greater role in the delivery of NOMS services the statutory PPO's remit will extend to these providers. However, organisations that provide services in relation to offenders on behalf of NOMS are currently within the remit of the PPO, so a statutory basis will not place additional demands on the resources of these bodies.

4(a) Benefits

The PPO is currently an administrative Home Office appointment separate from the Prison, Probation and Immigration Services. His office relies for its effectiveness on its reputation for wholly impartial investigations, and it has proved itself effective.

However, an advantage of the second option is that a statutory PPO will possess robust powers to obtain evidence. It is likely that those powers would be invoked very rarely. However, in the event of non co-operation on the part of key witnesses, recourse to these powers may prove crucial to the effectiveness of an investigation.

A further advantage of the second option is that a statutory PPO will possess enhanced independence and status in law. There will be a clear legal distinction between the Ombudsman for NOMS and the Secretary of State and the fundamentals of his remit will be enshrined in legislation.

Therefore, the second option was adopted because of the enhanced powers and independence of a statutory PPO.

A framework document on proposals to put the PPO on a statutory footing and include the investigation of deaths within his remit was circulated in May 2003 to a broad range of government and non-government interests. Responses to the consultation exercise were generally supportive. There was strong support for placing the PPO on a statutory footing. The majority of respondents supported the proposal to include the investigation of deaths within the PPO's remit, although some expressed reservations about aspects of the proposal, and a few recommended that another existing or new body would be more appropriate for the task.

4(b) Costs

A weakness of the first option is that the PPO does not possess formal powers of investigation. To effectively perform his functions, he relies on good investigative practices and the contractual obligations of staff to ensure co-operation. A further weakness is there is not currently a clear legal distinction between the PPO and the Secretary of State, which some may perceive as lessening the PPO's independence.

The first option is cost neutral. The second option would also not incur any additional costs. Adequate resources have previously been made available to the Prisons and Probation Ombudsman to perform the functions that will be placed on a statutory footing. The expectation is that any changes to the PPO's publicity materials to reflect changes to its powers and status will be delivered within existing resources. See Annex.

5. Monitoring and evaluation

It is not considered necessary to develop additional monitoring and evaluation arrangements. A statutory basis should not fundamentally alter the way in which the PPO's current functions are performed or the level of service provided.

The PPO currently has well developed systems for internal monitoring and evaluation of performance. For example, data is collected on the timeliness of complaint and death investigations, the subject matter of each complaint, and the apparent type of cause of each death case.

The PPO also publishes an annual report that provides detailed information on his performance in investigating complaints and deaths over the reporting year. The annual report contains information on the PPO's expenditure, summarises a number of completed investigations, and provides an opportunity for the post holder to publicise any issues of concern.

6. Contact point

Paul Wray
Inspectorate and Ombudsman Policy
Performance Management Unit
NOMS
NE Quarter, 3rd Floor, Fry Building, 2 Marsham St
London SW1P 2AW

Telephone: 020 7035 0329

Annex

A.	Measure	Statutory basis for Prisons and Probation Ombudsman
B.	Implementation costs <i>[Indicate in which year(s) they will be incurred]</i>	Capital: Nil Revenue(running): Nil
C.	Total operating costs [Express these as an annual figure with the variations in the next three years]	Capital: Nil Revenue(running): Nil
D.	Assumptions	Adequate resources have previously been made available to the Prisons and Probation Ombudsman to perform the functions that will be placed on a statutory footing. The expectation is that any changes to the Prison and Probation Ombudsman's publicity materials to reflect the changes to its powers and status will be delivered within existing resources.
E.	Main elements of the running costs	NA
F.	Cost-savings	Nil
G.	Cost owner	NA
H.	Transferred costs	NA

I.	Other resource impact(s)	<p>Staff working in the Prison, Probation and Immigration services are currently within the remit of the PPO. Statutory footing will not place additional demands on staff, including those in front-line delivery posts.</p> <p>Other bodies who provide services in relation to offenders on behalf of NOMS will come within the statutory PPO's remit in respect of those services, so will be required to co-operate in the resolution of complaints and investigation of deaths and incidents of concern. These bodies will be expected to respond to recommendations made by the statutory PPO. As commissioning and contestability is fully implemented and the voluntary and private sectors take a greater role in the delivery of offender management services the statutory PPO's remit will extend to these providers.</p> <p>However, organisations who currently provide services in relation to offenders on behalf of NOMS are within the remit of the PPO at present. Statutory footing will not therefore place additional demands on the resources of these bodies.</p>
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Regulatory Impact Assessment Youth Conditional Caution

1. Title of proposal

Youth Conditional Caution

1.1 Objective: to extend the availability of Conditional Cautions to 16 and 17 year old young offenders

1.2 Purpose and intended effect

The aim of the proposal is to reduce the number of children being taken to court for a low-level offence by creating an alternative mechanism for bringing young offenders to account and addressing underlying criminogenic factors. In the interests of justice, such a mechanism should be robust and tackle the causes of offending; it should provide confidence and satisfaction to victims, witnesses and the community; it should be procedurally simple, swift and less costly; it should be equitable and proportionate.

1.3 Background

The “Final Warning scheme”¹ has been effective in reducing re-offending but there is concern amongst practitioners – echoed by the Audit Commission and other reports – that the “two strikes and you’re out policy”² is too restrictive and is leading to too many young people going to court and getting convictions for relatively minor offences. Whilst we do not want a return to repeat cautioning there is scope for considering a third citeable strike in the form of a “Conditional Caution”, akin to the adult disposal. This would be in keeping with the Audit Commission recommendation for prosecutorial handling of some lower level cases which currently end up in court.

1.4 The Conditional Caution is a pre court disposal administered by the Police following review of the case by – and the consent of – the Crown Prosecution Service. It allows an offender to be given a caution, rather than face prosecution, on condition that he or she complies with agreed requirements. Failure to comply usually results in prosecution for the original offence.

¹ The Crime and Disorder Act 1998 created the reprimand and Warning, although “Final Warning” is the term commonly used. In the proposed system it will be useful to revert to the statutory term since the Warning will not be the final pre-court disposal available to children.

² The phrase “two strikes and you’re out” is misleading for a number of reasons e.g. a young offender may bypass the Reprimand and be given a Warning for a first offence if it is deemed insufficiently serious for prosecution but too serious for a Reprimand. In addition, juveniles may be issued with Penalty notices for Disorder and Fixed Penalty notices, which do not count as a ‘strike’. Use of the gravity matrix, weighing up seriousness and risk of re-offending, is a more appropriate model for judging what disposal is appropriate in particular circumstances.

- 1.5 The proposal that the Conditional Caution can be extended to young people at this stage aimed at 16 and 17 year olds was presented to the NCJB on 24 January 2006 as part of the Solicitor General's pre court diversions strategy. It was endorsed by the Board in principle, subject to legislation. Baroness Scotland wrote to the Domestic Affairs Committee (DA) to seek formal Cabinet approval, which has been agreed.

1.6 Rationale for Government Intervention

It is expected that introducing the Youth Conditional Caution may in the immediate term reduce the burden on courts, whilst ensuring rigorous intervention, and in the longer term may help to reduce the custodial population by providing more intensive interventions at an earlier stage in a young person's offending career.

2. Options

There are two options available:

- (i) Introduce legislation to make available the Conditional Caution to 16 and 17 year olds; or
- (ii) Not to introduce legislation

3. Costs and Benefits

Sectors and Groups affected

Youth Court

- 3.1 Removing low level uncontested cases from court will allow magistrates to focus their time on contested and more serious cases, where their deliberative and adjudicative functions add most value.
- 3.2 The Youth Conditional Caution has the potential to divert from court a number of young offenders who currently plead guilty to a low level offence and receive a 'first tier' sentence. (See Cost Benefit Analysis at Appendix A.)

Crown Prosecution Service (CPS)

- 3.3 The CPS will not have to deal with the young offender in court or prepare court papers, but CPS prosecutors will be involved in deciding which cases are suitable for a Youth Conditional Caution and then deciding, in consultation with the YOT where appropriate, what the conditions should be. CPS prosecutors will also administer the caution

and may be involved in follow-up action to ensure the conditions have been completed or deal with cases where a breach occurs.

- 3.4 Given that any model of the Conditional Caution will involve giving prosecutors powers currently exercised by the courts, it is inevitable that the CPS will have a greater front end role in individual cases. This increased workload should be offset by a reduction in CPS time at court and travelling but the Cost Benefit Analysis, at Appendix A, suggests an overall cost increase for the CPS.

Police

- 3.5 The expectation is that the Youth Conditional Caution will save police resources as shown in the Cost Benefit Analysis.

Youth Offending Teams (YOTs)

- 3.6 Under the Youth Conditional Caution YOTs will be required to intervene in circumstances where they would most likely have had to anyway. For example, the Youth Conditional Caution aims to divert a number of young offenders who would otherwise have received the minimum three month Referral Order. Because of proportionality, the period of YOT oversight and the stringency of the YOT intervention should be less than otherwise required by the Referral Order.
- 3.7 However, where a Conditional Caution is given where the offender might otherwise have received a fine or discharge, the YOTs workload may increase. This should be offset by the longer term benefits of reduced re offending through effective intervention. In overall terms however the Cost Benefit Analysis shows savings for YOTs.

Victims and Witnesses

- 3.8 One of the benefits of the adult Conditional Caution, and by extension the Youth Conditional Caution, is the speed with which an offence can be 'brought to justice' and an offender 'held to account', allowing victims to get on with their lives.
- 3.9 Delays at court are one of the most common reasons for victim dissatisfaction; diverting lower level cases from court will increase the capacity for courts to take other cases forward more swiftly therein reducing delays which should improve victim satisfaction. The restorative element of the Youth Conditional Caution will further contribute to victim satisfaction.
- 3.10 The adult Conditional Caution Code makes it clear that the victim's view must be taken into consideration by prosecutors when determining whether a Conditional Caution is suitable and this will be mirrored in the Code of Practice for the Youth Conditional Code.

Costs

- 3.11 The costs of the disposal have been quantified within the Cost Benefit Analysis, see Appendix A. The true/full benefits of the disposal cannot be identified until the disposal has been piloted therefore the Cost Benefit Analysis needs to be viewed with the caveat that the analysis is largely assumption based and costs will be no doubt be subject to change. A more accurate measure of the costs involved in the disposal can be carried out during the pilot. Some sensitivity analysis has been carried out that enables us to see how changes in different variables, for example relaxing some of the assumptions made in the Cost Benefit Analysis, may affect the cost saving of a Youth Conditional Caution per case.
- 3.12 The Cost Benefit Analysis cites the total average net saving of the Youth Conditional Caution, per offender, as £431.67. This figure has been drawn from assumption based analysis; the total cost saving per Youth Conditional Caution uses an average cost of all the base cases in the analysis – comprising of the sentences which might currently be appropriate for a Youth Conditional Caution – weighted by the probability of them occurring. Also included in the CBA is a distribution analysis of the net savings by the Police, Courts, CPS and YOT's.
- 3.13 The Cost Benefit Analysis estimates the total cost savings from this policy as £749,805.92 per annum.

Benefits

- 3.14 There are considerable benefits to be gained from adopting the proposal; transfer of prosecutorial powers means the courts will be trying fewer offenders for low level offences. The Crown Prosecution Service should spend less time within the Youth Conditional Caution process than in the prosecution process. Young offenders will have an opportunity to make amends for their offending behaviour and seek help for underlying causes. Victims and witnesses will see the offence 'brought to justice' and the offender 'held to account' sooner and victims will also get compensation sooner and will have the opportunity to take part in a Restorative Justice process which research suggests can be very effective in enabling the victim to 'move on'.

4. Small Firms Impact Test

- 4.1 With the exception of high street law firms, Youth Conditional Cautions are not likely to impact directly on small firms. Smaller firms may be affected due to an increase in the number of cases diverted from court. This may have a negative effect on the potential of each case to earn money (or legal aid) for the firm. It has not been possible to draw on the figures for legal aid costs from the adult conditional cautions to draw a precise comparison for future legal aid costs for young people but the expectation is that it will be revenue neutral.

- 4.2 Appropriate Voluntary Sector Organisations (VSOs) will have the opportunity to deliver services as part of the Youth Conditional Caution scheme. For example, offenders who have committed an alcohol related offence could be referred to a VSO which specialises in dealing with alcohol counselling as a condition for non prosecution. This has happened in the adult scheme and it is sensible to adopt the lessons learnt there.
- 4.3 OCJR strategy team and SPT have conducted meetings with a number of businesses to discuss approaches to tackling crime, such as shoplifting. The retail outlets consulted displayed a preference for Penalty Notices for Disorder because they were quick and dealt with the offender there and then. They also acknowledged that, although Conditional Cautions are less immediate, they can seek to address the causes of the crime and are speedier than a court trial. Because a substantial proportion of retail theft is repeat offending, shops spoke positively of the need for more complex disposals that address the causes and impact of offending behaviour if this helped to reduce re-offending. In these regards the Youth Conditional Caution would serve as a useful vehicle.

5. Competition Assessment

Not applicable.

6. Enforcement and Sanctions

- 6.1 It should not be assumed that every incidence of non compliance with a condition will result in a breach of a Youth Conditional Caution and a subsequent prosecution. Failure to comply with a Youth Conditional Caution may lead to prosecution for the original offence; or the prosecutor may vary the conditions, or the Youth Conditional Caution may remain as originally agreed or the prosecutor could determine that a prosecution is not in the public interest. In each case the CPS will decide whether the public interest test has been satisfied. This is consistent with enforcement conditions for the Adult Conditional Caution. A separate Code of Practice will be developed for the Youth Conditional Caution.
- 6.2 It is difficult to determine risks involved in the implementation of enforcement sanctions prior to the pilot of the Youth Conditional Caution. We have ensured a number of safeguards are in place to protect the interests of the young person concerned.
- 6.3 Guidance for the Youth Conditional Caution will be contained within a Code of Practice. They will be developed between the Ministry of Justice and stakeholders (CPS, YJB, police and others).

7. Monitoring and Evaluation

- 7.1 The Youth Conditional Caution will follow a pilot approach akin to the adult Conditional Caution. The pilot will be followed by an evaluation of the scheme which will inform the implementation, delivery, monitoring and future evaluation of the Youth Conditional Caution prior to any decision about national roll out. There will be a number of strands to the evaluation but the methodology cannot be detailed at this early stage.
- 7.2 We are currently in ongoing discussions with the Pre Court Diversions Team and the Police regarding the bespoke development of Police National Computer user requirements for the Youth Conditional Caution. We intend to trial the user requirements in the pilot.
- 7.3 The evaluation process will include examining the range of factors used when young offenders decide whether to accept a Youth Conditional Caution.

8. Consultation

- 8.1 A project team was created comprising representatives from across the Criminal Justice System, including:
- OCJR Justice and Enforcement Unit (now Project Delivery Unit)
 - OCJR Finance and Strategy Unit
 - Home Office Youth Justice and Children's Unit
 - Home Office Legal Advisor's Branch
 - Crown Prosecution Service
 - Association of Chief Police Officers
 - Youth Justice Board
 - Youth Offending Team representative
 - Crime and Drug's Strategy Unit
- 8.2 The project team have reported to the Diversions Steering Group comprising senior policy leads from across the CJS departments, ACPO and YJB. This work stream has also fed into the *Criminal Justice - Speedy Simple Summary review* and Respect Agenda.
- 8.3 The proposal to extend the Conditional Caution to 16 and 17 year olds is supported by ACPO, CPS and YJB, as well as policy leads in the Home Office and OCJR. Preliminary discussions with the Magistrates' Association have identified principled objections to removing cases from court, although this relates more to the overall concept of prosecutors having quasi judicial authority, rather than any specific part of the process.

9. Public Consultation

- 9.1 We have not deemed there to be a requirement to formally carry out a public consultation in relation to the impact of the proposal in terms of costs and benefits. However, stakeholders whom the policy will impact on have been involved in its development and their concerns have been taken into consideration. Consultation has been considered appropriate on equality issues and a number of organisations have been approached for consultation on how to best meet equality obligations in the proposal.
- 9.2 Both OCJR and DCA have commissioned research with the public that has informed the development of the policy. Promise conducted a qualitative project, commissioned by the DCA, to ³“explore public understanding of the concept of ‘summary justice’ ” with a view to gaining a better understanding of how the public feel about the idea of administering justice outside of the court system for low level offending. The report identified that the public are very concerned about crime in general and would like to see the courts act more quickly and effectively. If summary justice can potentially free up the courts to address more serious crimes then this would appeal to the public.
- 9.3 Following the McInnes Review⁴ OCJR commissioned a Mori Poll into Public Attitudes to Alternatives to prosecution in England and Wales. The findings indicate that all alternatives to prosecution were preferred to sending an offender to court for lower level offences and on balance the public favoured rehabilitative disposals.

10 Equality Impact Assessment

- 10.1 The EIA has been prepared and will be presented as a separate document.

11 Summary and Recommendation

- 11.1 We recommend that legislation to extend Conditional Cautions to 16/17s should proceed in view of the benefits that will accrue to them by not being dealt with in court and the overall cost saving to the Criminal Justice System.

³ Research Report *Acceptance and understanding of the principles of Summary justice among the general public*, Promise, May 2006

⁴ The McInnes Review of Summary Justice, reported in 2004, examined the provision of summary justice in Scotland including an examination of the use of alternatives to prosecution. The Mori Poll on *Public Attitudes to Alternatives to Prosecution*, April 2006, draws on the experience of the McInnes Review.

12 Ministerial Sign Off

- 12.1 I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice
June 2007**

Contact details:

Kevin Walsh
Youth Justice and Children's Unit
Tel: 0207 035 1307
Email: Kevin.Walsh@justice.gsi.gov.uk

CRIMINAL JUSTICE BILL

EXTENSION TO THE POWERS OF DESIGNATED CASEWORKERS (DCWS)

REGULATORY IMPACT ASSESSMENT APRIL 2007

1. PURPOSE AND INTENDED EFFECT

Objective

1.1 The overall objective of the proposed legislative change is to remove certain statutory exceptions which currently limit the types of case and hearing in which the Crown Prosecution Service (CPS) Designated Caseworker (DCW) may be the advocate, thereby extending their remit to prosecute a wider range of offences in the magistrates' courts.

Background

1.2 The CPS aspires to deliver a high quality service within the resource constraints set for it. DCW deployment is now established as an efficient and effective means of dealing with straightforward advocacy in the magistrates' courts. This approach enables CPS lawyers to focus more effectively on the provision of advice and devote more time to Higher Court Advocates (HCAs) to undertake more prosecutions before the Crown Court.

1.3 The proposed amendment to the Prosecution of Offences Act 1985 (the Act) is considered essential in order to maximise flexibility around the coverage of appearances in the magistrates' courts. It is also a key element in the CPS wider preparation in anticipation of changes to the offence profile of the magistrates' courts caseloads.

Rationale for government intervention

1.4 As part of the CPS over-arching advocacy strategy the Service is currently pursuing an initiative to increase deployment of DCWs year on year. The initiative is planned to secure DCW coverage of 30% of all magistrates' courts' sessions by 2009/10. However, this is likely to be optimum achievable within the existing DCW remit, and to ensure maximum flexibility to deploy staff in the most appropriate and cost effective way, the CPS must consider extending the role of DCWs to cover a wider range of offences and, it follows, hearings in the magistrates' courts.

1.5 In the event that CPS were not successful in obtaining a legislative change, then this would effectively cap DCW coverage at 30% of all magistrates' courts' sessions. This would have an adverse effect on the over-arching advocacy strategy by limiting the release of lawyers to focus on more sensitive and complex casework. This, in turn, would impact upon case building processes, hamper the delivery of initiatives such as CJSSS / court diversion and reduce the ability of the Service to deploy their HCAs before the Crown Court. It would not enable the Service to achieve its projected efficiency savings, thereby undermining its ability to deliver on its Corporate Business Plan.

2. CONSULTATION

Within government and the Judiciary

2.1 The Attorney General has consulted with his fellow Criminal Justice System (CJS) ministers. He has also discussed the proposal with the President of the Queen's Bench Division who is the senior member of the judiciary with responsibility for the criminal courts.

Public consultation

2.2 In view of the nature of the legislative change to what is a pre existing policy and the fact that it is about optimisation of resources leading to efficiency savings within the Crown Prosecution Service, it is not proposed to undertake a public consultation.

4. OPTIONS

Option 1 – *take no action to expand DCW powers beyond current statutory remit.*

4.1 In adopting this option the CPS would relax certain internal restrictions to allow DCWs to extend into areas of work that are within their statutory remit but are currently excluded through the Director's "General Instructions" issued under the Act. This approach would assist deployment levels to rise in the short to medium term, possibly to an optimum peak estimated to be 30% coverage of available magistrates' courts' sessions. However, the failure to extend the remit of DCWs to counteract anticipated changes to caseload profile (the type of offences / cases heard in the magistrate's courts) will, over time, reduce the number of DCW compatible hearings and impact upon their effective deployment.

4.2 This option would also adversely affect the release of in house lawyers (Crown Prosecutors) to undertake more sensitive and complex casework and, in turn, would impact upon the Service's availability to deploy its HCAs in the Crown Court. The resultant failure to address caseload profile issues would reverse the current position and mean that the CPS would need to commit more Crown Prosecutors to the magistrates court or employ lawyer agents to cover hearings.. Overall this would affect casework handling and have a significant impact on projected efficiency savings.

Option 2 – *seek limited legislative change to give DCWs the powers to deal with indictable only cases, "sendings" and transfer of cases to the Crown Court.*

4.2 This option would create significant additional flexibility for the courts in creating wholly DCW compatible court lists, and would enable increased deployment beyond those levels achievable in Option 1. However, similar limitations apply in terms of failing to compensate for the changing work profile in the magistrates' courts.

4.4 Whilst this option would enable limited release of lawyer resources over and above Option 1, it would overall compromise the CPS's ability to optimise its resources.

Option 3 – seek the full range of additional powers through significant legislative changes, embracing the changes in option 2 and allowing DCWs to conduct trials and a limited range of civil proceedings.

4.5 This option would provide the CPS with maximum flexibility to deploy its own staff in an appropriate, efficient and cost effective way in the face of the SR2007 flat cash settlement and the changing magistrates' court work profile. In freeing up additional lawyer time for case review and preparation of more sensitive and high profile cases it would actively contribute to improving the case building process and realise the benefits of initiatives such as CJSSS and court diversion. It would drive our advocacy strategy programme enabling greater deployment of HCAs in the Crown Court, including undertaking a greater number of jury trials resulting in efficiency savings across the board.

4.6 Option 3 has received ministerial support from the Attorney General.

5. COSTS AND BENEFITS

Sectors and groups affected

5.1 The implementation of this policy will result in tangible benefits for the CPS through the optimisation of resources and resultant efficiency savings.

5.2 There may be consequential savings in terms of resources for the HM Court Service (HMCS). Such savings are likely to be centred on the current position whereby with a limited remit, court sessions in the magistrate's courts have to be tailored to suit the type of case and hearing in which a DCW may appear before the court. With an extended remit the tailoring of court sessions will, in time (to allow for the training of DCWs in any extended powers), no longer be necessary.

5.3 There is no direct impact on businesses, charities, or victims' groups (voluntary bodies).

Costs and benefits

Measure	Key benefits of preferred option	Benefits
Option 1 – take no action to expand DCW powers beyond current statutory remit.	Short to medium term benefit to the CPS in terms of efficiency savings.	Estimated net savings of £1.5m p/a by 2009/10

Measure	Key benefits of preferred option	Benefits
<p>Option 2 – seek limited legislative change to give DCWs the powers to deal with indictable only cases “sendings” and transfer of cases to the Crown Court.</p>	<p>Significant additional flexibility around deployment and the freeing of lawyer resources to focus on more serious and complex casework and delivery of CJS initiatives such as CJSSS. Reduced need for lawyer agents in the magistrates courts with resultant efficiency savings</p>	<p>Additional estimated net savings of £1.2m p/a over Option 1 (cumulative net savings of £2.7m p/a)</p>
<p>Option 3 – seek the full range of additional powers through significant legislative changes, embracing the changes in option 2 and allowing DCWs to conduct trials and a limited range of civil proceedings.</p>	<p>Maximum flexibility to allow optimisation of staff deployment across the courts. Improve case building process with lawyers focused on sensitive / complex casework and able to deliver CJS initiatives such as CJSSS and court diversion. Minimal need for lawyer agents in the magistrates courts with optimisation of efficiency savings across the board.</p>	<p>Additional estimated net savings of £2.3m p/a over Options 1 and 2. This figure is based on the average of a range of possible outcomes (cumulative net savings of £5m p/a)</p>

6. SMALL FIRMS IMPACT TEST

6.1 There are no impacts under this category.

7. COMPETITION ASSESSMENT

7.1 There are no impacts under this heading.

8. ENFORCEMENT, SANCTIONS AND MONITORING

8.1 The extended powers will be enforced through CPS local management.

8.2 Local delivery of the policy and achievement of targets will be monitored centrally through quarterly performance reviews with structured feedback to CPS Areas.

8.2 Internal complaints and discipline procedures will apply where appropriate.

9. IMPLEMENTATION AND DELIVERY PLAN

Training

9.1 Central to the CPS strategy in delivering extended powers and in order to maximise success and mitigate failure of the initiative, the CPS will put in place a robust training package that will build on the current training scheme and equip DCWs with the necessary skills and expertise to undertake the wider range of prosecutorial responsibilities that would fall to them under Options 3.

Managing the process

9.2 The CPS will seek implementation of the amending provisions to The Prosecution of Offences Act 1985 on Royal Assent.

9.3 The implementation of the extended powers will be managed by the CPS through the exercise of the Director's "General Instructions". These instructions issued under section 7A of the Prosecution of Offences Act 1985 govern the work that DCWs may undertake. The CPS will ensure that those exercising extended powers are trained, competent and properly supervised by experienced CPS Crown Prosecutors.

10. POST-IMPLEMENTATION REVIEW

10.1 CPS Areas will be liable for inspection by Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) who will be asked to assess, as part of an inspection matrix, the delivery by the Service of this important initiative.

10.2 The CPS may also commission periodic reviews in conjunction with the Departmental Trade Union Side. There is precedent within the CPS for joint reviews of this nature.

11. SUMMARY AND RECOMMENDATION

11.1 The implantation of this policy through changes to legislation will allow the CPS to deploy their resources more effectively; enable lawyers to focus on more complex and sensitive casework and achieve cumulative net savings estimated at £5m per annum.

12. DECLARATION AND PUBLICATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**The Rt Hon the Lord Goldsmith QC
Attorney General
April 2007**

Partial Regulatory Impact Assessment

Criminal Defence Service amendments to the Access to Justice Act 1999 as part of the Criminal Justice Bill 2007

1. Criminal Defence Service

To take forward amendments to provisions on criminal legal aid in the Access to Justice Act 1999:

- (a) to make it possible for a right to representation to be granted at an earlier stage;
- (b) to widen the power to pilot schemes; and
- (c) to make it easier to obtain information from government departments for the purposes of means testing via two statutory gateways with the Department for Work and Pensions (DWP) and HM Revenue and Customs (HMRC) respectively.

Purpose and Intended Effect

Objective

The three provisions outlined above are intended to facilitate and improve the existing process by which an individual applies for and is granted the right to criminal legal aid representation.

The measures at (a) and (b) are in effect enabling powers which will allow the Government to design and test new schemes, and which would require regulations to give them effect. Impact assessments will therefore be carried out once more detailed options about how the new, more flexible power at (a) would be used, or once the detail of any proposed pilot scheme at (b) had been developed. Any design and development work will include an assessment of the impact on public and private bodies, and would include consultation with those groups.

This Regulatory Impact Assessment (RIA) therefore concentrates solely on the proposed creation of two new statutory gateways to allow better information sharing between the Legal Services Commission (LSC) and (DWP) and HMRC.

Statutory gateway with DWP

Under the current means testing arrangements for those appearing before magistrates' courts, implemented in October 2006, some legal aid applicants can be automatically 'passported' through the new means test if they are in receipt of specific means-tested welfare benefits.

Currently, applications are verified through a 'real time' electronic link from the means testing software used by Her Majesty's Court Service (HMCS) to the DWP's central benefit database. This system relied on an applicant providing correct details of their National Insurance Number (NINO). This is

not always possible, or possible within the required timescales. In order to minimise the risk of delay and maximise the effectiveness of the DWP link, the Government would therefore like to introduce a more flexible mechanism. This would allow court staff to verify benefit status by accessing information regarding all welfare benefits being claimed by the applicant. This process of verification could be done using the name, address and date of birth of the individual concerned. Legislation is necessary to meet the possibility that the defendant might not consent to access to his details being given. As it is necessary to establish a clear legal basis for the sharing of this information, it is proposed to create a statutory gateway.

Statutory Gateway with HMRC

The establishment of the statutory gateway with HM Revenue and Customs (HMRC) will allow for a post grant audit to take place in order to help deter fraud as well as informing the Government's counter fraud strategy.

Background

The legislative provisions regarding means testing are contained in Schedule 3 of the Access to Justice Act 1999 as amended by the Criminal Defence Service Act 2006. The regulatory framework for the new means testing scheme is set out in secondary legislation and was implemented in magistrates' courts on 2 October 2006. The new means test sits alongside the existing 'Interests of Justice' test in determining an applicant's eligibility for criminal legal aid representation in magistrates' courts.

The Government is committed to the principle of means testing and strongly believes that those who can afford to pay for their own defence should do so. This will allow legal aid to be focused on the most vulnerable who cannot afford to pay for a lawyer. In so doing it will help to put the legal aid budget on a more secure financial footing, so that it is able to continue to serve the needs of not only this but future generations.

Rationale for Government Intervention

The Government has a responsibility to ensure that those who cannot meet the costs of their defence are provided with appropriate legal advice and representation, where the interests of justice require. The means testing system is forecast to deliver net savings of £35m per year. Legal aid spending has risen from £1.5 billion in 1997-98 to over £2 billion in 2005 with criminal legal aid providing the driver for the large majority of the increase. The Government believes that those who can afford to pay for their defence costs should be made to do so, and the introduction of a financial eligibility test enshrines this, as well as helping to address the existing overspend on criminal legal aid.

It is essential that the means testing scheme assesses as quickly and accurately as possible the ability of a defendant to pay for the costs of his defence, while minimising the administrative burden on defendants, solicitors, the courts, the LSC and other government agencies. The system needs to

ensure that legal aid is granted correctly to those who are financially eligible, and that adequate measures are in place to protect against fraud or incorrect grant. The scheme has therefore been designed to balance accuracy and the need to protect public funds against the requirement for administrative simplicity. For this reason, the evidential requirements are as light as possible. In addition, certain groups, including those in receipt of specific means tested benefits, are automatically 'passported' through the new means test.

Under the means testing scheme, annual gross income is weighted to reflect household and family circumstances. As a result of this adjustment any defendant with a weighted gross annual income of under £12,007 or less, (the lower threshold), is financially eligible; if this figure is £21,487 or more (the upper threshold) they are financially ineligible. Defendants whose adjusted income falls between the two thresholds are subject to a more detailed assessment that takes into account outgoings such as actual housing costs and actual maintenance costs.

Defendants are automatically 'passported' through the new means test if they are under 16, under 18 and in full time education, or if they are in receipt of Income Support, Income Based Job Seeker's Allowance (IBJSA) or a guaranteed state pension credit. The application forms which defendants sign explicitly seek their consent so that the LSC or HMCS verify the data provided with relevant third parties, including the DWP.

Applications under the 'passported benefits' provisions are verified by court staff through a 'real time' electronic link to the DWP central benefits database from the means testing software used by HMCS. The link checks whether the name, date of birth and NINO provided matches those held by DWP, and gives a 'pass', 'fail' or 'undetermined' response to identify whether the individual is in receipt of a 'passporting' benefit.

It is also essential that the means testing scheme is resulting in grants of criminal legal aid to those who qualify and to confirm that public funding is being correctly used. As part of this, and as part of our commitment to reinforce our strategy to combating fraud, a number of applications will be sampled to verify declared income to ensure that they were eligible for the legal aid they received. By submitting a pay slip, it is possible that some applicants may "hide" other forms of income which, if declared, might make them ineligible. Officials have therefore recently approached employers directly asking them to confirm the income declared in the application. 36% of employers have not responded despite repeated approaches. In addition, the Government is concerned that a number of applicants are declaring they have no income. The Government wants to be satisfied – and be able to satisfy the National Audit Office - that sufficiently robust and effective pre- and post-grant controls are in place.

Without relevant HMRC income information it will not be possible for us to determine whether to further investigate eligibility for applicants declaring no

income, applicants who are self-employed and applicants who may have more than one paid job. To ensure audits are as effective as possible and impose a minimal administrative burden on LSC and HMRC, the Government proposes to establish a statutory gateway to access relevant information held by HMRC about applicants' income.

3. Consultation

Consultation took place prior to the implementation of the new means test on 2 October 2006. The Government has consulted with the following: Justices' Clerks Society, Law Society, General Council of the Bar, Legal Aid Practitioners Group, London Criminal Courts Solicitors Association, Criminal Law Solicitors Association, Criminal Bar Association, Magistrates' Association, senior members of the Judiciary as well as groups such as Liberty and Citizens Advice.

Since implementation last October, concerns from legal aid providers about the DWP link have been raised via the LSC's Transfer of Grant Stakeholder Group (which met regularly to look at issues around the means test), through other LSC forums and in correspondence to officials and to Ministers. We have also had feedback from court staff who process applications.

Impact of consultation

Following on from the earlier consultation, we have already taken interim steps by making some changes to the IT system used by court staff to process applications, and by clarifying guidance to court staff and legal aid suppliers. However, the statutory gateway offers the best long term solution.

Devolution

This applies to England and Wales only. Scotland and Northern Ireland have separate schemes for the grant of legal aid.

4. Options

The Department considered achieving its objectives by means of the following options:

- Option 1 – Do nothing
- Option 2 – Voluntary arrangements
- Option 3 – Introducing primary and secondary legislation

Option 1 – Do nothing

The current system does allow the information provided by defendants to be matched with that held on the DWP database, and in many cases allows the speedy and accurate processing of applications.

This option would incur no costs, and would involve no changes to existing procedures. There would be no short-term burdens such as new guidance, or getting to grips with new application forms or changes to IT systems.

However, there can be delays in the grant of legal aid where a defendant does not know their NINO, supplies incorrect details, or if there is confusion as to which benefit is received. Delays in the grant of legal aid can lead to delays to the wider court system, with a knock-on impact on other Criminal Justice System (CJS) agencies, as well as for defendants, victims and witnesses. We also have a duty to ensure legal aid is only granted to those who are financially eligible, and to protect public funds.

Option 2 – Voluntary arrangements

The current system requires defendants to consent to their data being verified with third parties, including the DWP. Consent can allow the sharing of relevant information for certain purposes where there is no statutory provision for this. Recognising the importance of protecting individuals' personal information and maintaining confidentiality, government bodies are limited to sharing information only where there is consent, or statutory provision. It would not therefore be possible to design any voluntary scheme.

Option 3 - Introducing primary and secondary legislation

Since implementation of the new scheme, although the link itself and the associated software has performed well, stakeholders have raised a number of practical issues.

For example, currently the link relies on an applicant providing correct details of their NINO. This is not always possible, or possible within the required timescales. Also, if the individual is in custody, for example, and cannot recall his NINO, the processing system would refuse his application, even though he might in fact be financially eligible; this could lead to delays while he re-applied. Many defendants do not correctly recall their NINO, or do not understand if their benefit entitles them to be 'passported' through the means test. For example there has been confusion between applicants in receipt of IBJSA and those receiving contribution based JSA. Equally many defendants mistakenly believe incapacity benefit 'passports' the applicant through the means test.

In order to address these concerns, some changes have already been made to the system. These modifications aim to minimise the risk of data-entry error whilst further practical advice has also been provided to practitioners. In addition, it has been recognised that those held in custody may face particular practical difficulties in securing the required information and evidence related to receipt of a 'passported' benefit. For this reason, where a defendant has been remanded into custody by the court, the rules relating to the provision of the NINO, or proof of the benefit claim, have been relaxed. Further changes to the IT functionality are also being developed. This will help to address the situation where a defendant in custody is unable to sign

on and is therefore removed from the database that day, only to be reinstated, following subsequent contact with DWP.

Nonetheless, in the long-term, to ensure that 'passported' benefit applications can be processed as swiftly and accurately as possible, it is proposed to establish a new statutory gateway. This will allow for access to DWP's database so that court staff can verify whether the applicant is in receipt of a 'passported' benefit or any other type of benefit. This check can be conducted using just the applicant's name, address or date of birth. The gateway will provide a clear legal basis on which relevant information can be shared, and will ensure that the system works as effectively as possible with minimal burden on defendants, solicitors, court staff and DWP staff.

The data sharing arrangements through the statutory gateway with HMRC will ensure that accurate post-grant checks can be conducted to verify that legal aid is only being awarded in appropriate cases. Subject to detailed discussions and scoping work with HMRC officials, the proposal is for officials to be able to access information about levels of earned and unearned income. In light of this information and whether income levels are within an agreed tolerance of what was declared, we will assess whether to further investigate eligibility for the grant. Where HMRC information indicates funding may have been granted incorrectly, we would contact the applicant for confirmation of current earnings. Where it is clear that applicants have provided false information, we may seek to recover costs. HMRC's information is not contemporaneous, but it will provide a valuable indicator of risk. Information from HMRC will also allow us to get a clearer picture of defendant behaviour to inform future policy changes (for example, either to reduce the evidential requirements in low risk applications, or to require more up front evidence where the risk is high). The gateway would also make it an offence to misuse any information shared, in addition to existing protections.

In both cases, the statutory gateways with DWP and HMRC would only allow the sharing of relevant information for the specific purpose of administering the grant of legal aid (a function of the LSC under schedule 3 of the Access to Justice Act 1999). The gateway will set out how the information will be protected, and will make it an offence to disclose or use the information for any other purpose.

5. Costs and benefits

Taken together, the financial consequences of these provisions are assessed to be minimal. There is no immediate cost associated with the provisions on the timing of grant and powers to pilot. Any costs and other impacts will be explored before any scheme is implemented under these provisions.

The two proposed statutory gateways (option 3) is designed to smooth the existing application process, not to change it. There would be no change to the application forms, and only minimal changes to the guidance to explain

the new system. There would therefore be no costs to defendants or to legal aid suppliers. There would be some changes to the IT system used by HMCS and LSC staff, as well as training required to implement these.

It is estimated that the total costs associated with establishing the new statutory gateway with DWP will be no more than £1 million. This broadly breaks down as:

- IT development of access arrangements to DWP Central Benefits Database £500,000
- Development costs to the Legal Services Commission and DWP testing £250,000
- VAT (17.5%) £131,000

Initial scoping work in respect of the gateway arrangements with HMRC is estimated to cost between £60,000 to £100,000. Additional design and build costs will be incurred but it will only be possible to cost these once the scoping exercise is complete.

Sectors and Groups Affected

Public Sector

While the LSC is responsible for the grant of legal aid in the magistrates' courts, they delegate the day-to-day administration of the scheme to HMCS, and reimburse HMCS for the costs of this. As set out above, a number of practical issues have arisen around the verification of benefit status since the implementation of the means test in October 2006. These issues primarily affect HMCS, as they can cause an increased administrative burden and delay in the processing of applications, and could potentially delay the progress of cases through the courts. While HMCS staff will need training to support familiarisation with the changes to the IT system the statutory gateway would facilitate, in the long term they will benefit from a system which works more effectively, with fewer delays. Whilst the costs of the change will fall to the LSC, they will also benefit in the longer term from an improved system and lower administrative costs as a result.

As holders of the benefit information required for the processing of applications, the DWP will also be affected by the change. They will work with the LSC to design and build the changes to the existing IT system. The LSC will meet the costs to DWP associated with this work.

Businesses

Legal Aid Providers

Legal aid providers should benefit from the proposed data gateway. Under the current system, there can be delays to grant where the result is undetermined and where further evidence is therefore required; where a defendant has to apply to Her Majesty's Revenue and Customs (HMRC) to find out his NINO; where there is uncertainty as to whether a defendant is in receipt of a relevant benefit; or where a defendant is held in custody. The new system the gateway will facilitate will remove these problems, and speed the process, and will therefore enable providers to undertake work secure in the knowledge that their client is eligible for legal aid.

Consumers

The proposed change is designed to improve the working of the current system without changing the requirements on defendants. In the future individuals who apply for criminal legal aid or need legal aid should benefit from the improved processing, as delay in the grant of legal aid will be removed. This will ensure access to legal representation at the earliest opportunity.

Voluntary Groups

It is not anticipated that the proposed new gateway would have any noticeable impact on voluntary groups. We will contact Citizens Advice and similar bodies to ensure they are aware of the changes so they can advise customers of the improvements to the system accordingly, although there will be no changes to the application forms or requirements on defendants.

Race equality

Magistrates' courts do not routinely collect data on the ethnicity of defendants, but at a general level, statistics suggest that Black and Minority Ethnic groups (BME) have a higher representation as users of the Criminal Justice System when compared to their representation as members of the population as a whole.

In addition, many BME groups tend to have lower incomes on average, and were they to become defendants are more likely to be subject to means testing. However, means testing per se will only disadvantage a particular group if it ignores an element of expenditure common to a specific group. The government is confident this is not the case. The only function of the scheme is to calculate the ability of any defendant to pay for their defence costs.

The Government will consult with stakeholders, including the Commission for Racial Equality and the Equal Opportunities Commission, to gather comments on the proposals.

Disability

CJS data does not note offender or defendant disabilities, however this Department is of the opinion that disabled defendants will not be differentially affected by the policy proposals. There is a high correlation between

individuals in receipt of disability benefits and receipt of income support (about 80% of those in receipt of incapacity benefit also receive income support). Therefore it is very likely that someone who is severely and permanently disabled will be passportable through the means test.

Age

Currently, the means test in the magistrates' court means that youths who have no income of their own are 'passportable'. Those under the age of 16, or under 18 and in full time education are automatically deemed financially ineligible, as are those in receipt of Pension Credit. No change is proposed to this. In 2003/4, in the magistrates' court the number of youths aged 10-18 subject to criminal proceedings was 100,500 (87,382 males & 13,118 females). This represents just under 20% of the total defendant population. Equally only 4,126 magistrates' court defendants (0.8%) were over the age of 60.

Gender

In 2003/4 female defendants made up just under 15% of defendants proceeded against for non-summary offences. The means test would only impact differentially on men and women if at a benefit unit level the two individuals were treated as separate individuals. For example, if a husband's income makes him ineligible, but his wife who does not work is eligible. However, the current means test does aggregate both income and outgoings, and so the government is confident there is no scenario where either gender would be unfairly disadvantaged. No changes to the aggregation elements of the scheme are proposed.

Economic

Overall, the introduction of the means test in the magistrates' courts is forecast to deliver net annual savings of £35m. The proposed gateway is estimated to cost approximately £1m, but in the longer term will cut administrative costs and minimise the potential for delays, which have an associated cost for the CJS agencies affected.

Environmental

There will be no environmental impact associated with the proposed change.

Social

Criminal legal aid is intended to provide legal assistance and representation to vulnerable groups who may otherwise be at risk of social exclusion. The proposals outlined in this Impact Assessment are not intended to alter, reduce or remove that entitlement from these groups.

The issues assessed here are primarily concerned with managing the process of legal aid more effectively.

6. Small Firms Impact Test

There does not appear to be a significant impact on small businesses.

7. Competition assessment

The proposal is likely to have little or no effect on competition.

8. The Legal Aid impact test

Means testing in the Magistrates' court is forecast to save £35 million annually. This breaks down as:

- £58 million - Gross Savings

- MINUS

- £13 million - Additional Cost to Central Funds
- £5 million - Administration Costs of the new scheme
- £5 million - Cost of the Early Cover Scheme

- £35 million - Total Net Savings

The model on which the savings forecast is based uses data from the Family Resources Survey (FRS). The FRS is a national survey undertaken annually by the Department for Work and Pensions. It involves a random sample of approximately 27,500 private UK households and contains the necessary detailed financial and household information required for developing and testing different options for means testing.

Although there are costs to the LSC, estimated at £1 million, of improving the DWP link in terms of IT changes, staff time, guidance to courts and initial delays, in the longer term this should reduce administrative costs. Where there have been incorrect grants made the HMRC gateway will help to track them down.

Initial scoping work in respect of the gateway arrangements with HMRC is estimated to cost between £60,000 to £100,000. Additional design and build costs will be incurred but it will only be possible to cost these once the scoping exercise is complete.

9. Enforcement, sanctions and monitoring

There will be ongoing monitoring of processing times and savings by the Steering Group, comprising representatives of LSC, HMCS and Ministry of Justice (MoJ), which is responsible for overseeing the Service Level Agreement between the organisations governing the processing and granting

of legal aid. In addition, the LSC will carry out regular audits as part of its anti-fraud strategy. The National Audit Office (NAO) will also monitor the performance of HMCS and the LSC.

Data sharing with HMRC will allow us to verify post grant that applicants were eligible for legal aid. This is particularly important in high risk cases such as where the applicant is self-employed or has declared they have no income, where there are no other independent bodies who can verify the information which has been given. The intelligence gathered will be used to inform LSC whether further enquiries are required of the applicant where eligibility may be in doubt and should these further enquiries reveal that the applicant was not eligible, they will be prosecuted and the LSC will seek to recover their costs.

10. Implementation and Delivery Plans

IT implementation changes are dependent on the Business Implementation plans. It is estimated that the IT for both DWP and the LSC could be completed within a 6 month timescale, once the full business requirements have been finalised and approved by all parties. Realistically, we would be looking at an implementation date sometime between April and October 2008.

HMRC and LSC have recently conducted a trial exercise to establish the effectiveness of data sharing, this has given a high level of assurance that legal aid has been granted correctly.

11. Administrative Burdens and Compensatory Simplification

The proposals set out here are not intended to create additional burdens on legal aid providers or the public sector. The data sharing proposal will simplify and reduce the burden of rechecking queries in relation to an applicant's benefit status. The ability to issue provisional certificates will benefit the LSC and legal aid providers by starting the process earlier although initially this will require some adaptation with process change.

12. Summary and Recommendation

Option 3 is recommended. The estimated £1m cost of the data gateway and short term impact of changes to the IT system used by court staff is outweighed by the improved service it will deliver. This will benefit defendants and legal aid providers, minimise the risk of delay to the CJS and in the longer term reduce the administrative burden on HMCS.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Vera Baird QC MP
Parliamentary Under Secretary of State
Ministry of Justice
21 June 2007**

**Contact point for enquiries and comments:
David Stobie
Criminal Legal Aid Strategy
Selborne House
020 7210 8686**

REGULATORY IMPACT ASSESSMENT

1. Title

1.1. Reform of the arrangements under which state compensation is paid for miscarriages of justice.

2. Purpose and intended effect.

Objective

2.1 To complete the implementation, by way of legislation, of the proposals made in the Home Secretary's Written Ministerial Statement of 19 April 2006, thereby continuing his programme of reform of the arrangements for paying compensation in cases of miscarriage of justice and rebalancing the Criminal Justice System. The full statement is attached as an annex to this RIA.

Background

2.2 The statement made on 19 April 2006 abolished the discretionary scheme for compensation for wrongful conviction or charge, leaving the statutory scheme under s133 of the Criminal Justice Act 1988 as the single source of compensation for wrongful conviction payable by the Home Secretary. The statutory scheme meets international obligations under the UN International Covenant on Civil and Political Rights. The scheme places a duty on the Secretary of State to pay compensation where there has been a miscarriage of justice in the form of conviction quashed at an out of time appeal, because of a new or newly-discovered fact not previously known to the person convicted.

2.3 Although the Secretary of State decides whether an individual should receive compensation in respect of a wrongful conviction, the level of any award is a matter for the independent Assessor. The independent Assessor is appointed by the Secretary of State following an open competition (in accordance with the guidance issued by the OCPA) and is someone who is experienced in the assessment of damages.

Rationale for Government intervention

2.4 Current pay-outs are counter-productive of public confidence in the criminal justice system. Average payouts of around £250k for victims of miscarriages of justice, against just £5k for victims of violent crime sit uneasily with the commitment to rebalance the system in favour of the innocent victim of crime.

2.5 Where there is compensation payable, the Government believes that overall limits should be applied on what can be paid and how it is calculated, so as to ensure that payments are proportionate, including ensuring a better balance with payments to victims of crime. The Government is concerned to end massive payouts to applicants who have had convictions quashed, sometimes on a procedural technicality, when they may have other convictions, sometimes of a very serious nature. The Government proposes, therefore, to introduce an overall cap of £500,000 for awards of compensation, which is still a very significant sum.

2.6 Some progress has already been made through the independent Assessor, who has taken a more robust approach in taking account of applicants' other

convictions and contributory conduct when making his assessments of compensation. However, the law currently limits such deductions to the amount awarded to the applicant for non-pecuniary loss (essentially, damage to reputation, mental suffering, and injury to feelings). The Government proposes extending the Assessor's power to make deductions because of conduct and convictions from the whole of the award and with the possibility of the award being reduced to a nominal payment in exceptional cases. It will also make provision to provide that the maximum recoverable for loss of earnings to be 1.5 times the median gross annual earnings, the same as for compensation paid to victims of crime.

2.7 The Government has also decided to introduce a 2-year time limit for applications to be made following the quashing of a conviction. The Government proposes that, subject to an exceptionality clause, applications will only be accepted if they are made within 2 years of the conviction being quashed by the Court of Appeal or the date of acquittal if the Court of Appeal has ordered a retrial.

3. Options

3.1 **Option 1:** To do nothing further and leave the operation of s133 as it currently stands.

3.2 **Option 2:** To complete the implementation, by way of legislation, of the proposals made in the then Home Secretary's statement of 19 April 2006, thereby continuing the programme of reform of the arrangements for paying compensation in cases of miscarriage of justice and rebalancing the Criminal Justice System.

4. Costs and Benefits

Sectors and groups affected

4.1 Those affected by these proposals will be those who have had convictions quashed, out of time, and who meet the requirements of S133 of the Criminal Justice Act 1988 for an award of compensation.

4.2 181 convictions were quashed by the Court of Appeal in 2006; against these figures we received only 79 applications for compensation in 2005/6. Around 25 applicants a year are eligible under the statutory scheme and these changes in policy will apply equally to all successful applicants. The eligibility criteria for the statutory scheme meets our international obligations and so will not be changed so it is likely that the number of people eligible will remain the same, although the way their compensation is assessed will be changed.

4.3 An Equality Impact Assessment has been completed.

Benefits

4.4

Option 1	Key Benefits	Costs
To do nothing further and leave the operation of s133 as it currently stands.	In all cases successful applicants will receive compensation that puts them back into the financial position as if the wrongful conviction had not taken place	In 2006/7 the cost of statutory compensation was £9m. [<i>This is a provisional figure awaiting end of year totals</i>].

Option 2	Key Benefits	Costs
<ul style="list-style-type: none"> • Capping overall award to £500,000 • Deductions for criminal convictions and contributory conduct to be applied to the overall award • In exceptional cases restricting the award to a nominal payment • Capping loss of earnings awards to 1.5 times the median gross annual earnings. • Introducing a time limit for making applications 	<ul style="list-style-type: none"> • Fairer, simpler and swifter system • Brings about a better balance with compensation for victims of crime • Makes more appropriate recognition of applicants other criminal convictions • Re balancing CJS generally 	<p>We expect that over time, when all the measures are in place and the outstanding cases have been completed, savings will be around £2.5 million. All the savings will be ploughed back to support victims of crime.</p>

5. Small Firms Impact Test

5.1 Applicants for compensation for wrongful conviction are not required to be legally represented. Some firms of solicitors and accountants who have hitherto represented applicants, and who have been affected by the earlier reforms made in the Home Secretary's statement of 19 April 2006, may decide that the work is no longer profitable. However, it is our view that with the small numbers who will be affected by these proposals there will be no significant impact on business. It is also open to applicants, if it is their wish, to negotiate a success fee with their solicitors and meet this from their eventual compensation.

6. Competition assessment

6.1 The Government do not anticipate any positive or negative effect on competition.

7. Enforcement, sanctions and monitoring

7.1 The independent Assessor will continue to decide the level or quantum of award, which will be binding on the Secretary of State. The Government will monitor the impact of the changes in the level of payments made, the time taken to settle applications and the number of applications made etc.

8. Implementation and delivery plan

8.1. Provision will be made within the Criminal Justice Bill 2007 to implement the proposed changes by way of amendments to section 133 of the Criminal Justice Act 1988.

9. Post-implementation review

9.1 None proposed other than the monitoring proposed above (7.1).

10. Summary and recommendation

10.1 The further changes will complete a package of changes announced on 19 April 2006 to make a fairer, simpler and swifter system. The then Home Secretary announced the intention to legislate to bring about these further changes to the compensation system and therefore the only benefits and savings will come from implementing option 2.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Gerry Sutcliffe
Parliamentary Under Secretary of State
Ministry of Justice
20 June 2007

Contact point for enquiries and comments:

Liton Miah
Office for Criminal Justice Reform
Better Trials Unit
Miscarriage of Justice Team
Ground Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

020 7035 8471
liton.miah@cjs.gsi.gov.uk
Miscarriages of Justice compensation

Regulatory Impact Assessment

NEW OFFENCE OF POSSESSION OF EXTREME PORNOGRAPHIC MATERIAL

1. Purpose and intended effect

(I) Objective

The objective of this offence is to deter interest in extreme pornographic material by making illegal the simple possession of a limited range of such material which is graphic, sexually explicit, and which contains serious violence or sexualised violence towards women and men. It is intended that this possession offence will only apply to material which would already be illegal to publish or distribute in the United Kingdom under the Obscene Publications Act 1959 (OPA). In particular, actual scenes or realistic depictions of the following activities will be covered:

- a) intercourse or oral sex with an animal
- b) sexual interference with a human corpse
- c) serious violence*
- d) rape

* By serious violence, we mean life threatening or likely to result in serious disabling injury.

(II) Background

Illegal pornographic material has always been available and those who publish and distribute it in the UK risk prosecution under the OPA. There is now some evidence that, with the development of the Internet, the boundaries of the type of pornographic material available is being pushed back with more extreme images being sought after and provided. The development of the Internet and other communication technologies means that access to this material has never been easier, nor has it been available in such quantity. In pre-Internet days, individuals who wished to view this kind of material would need to actively seek it out, bring it into their home in physical form (eg magazines or video-tapes) or have it delivered, risking discovery and embarrassment at every stage. Now they are able to access it from their computers at home (or from their place of work) with relative ease.

The material under consideration in the new offence is of an extreme nature; it does not depict openly consensual sexual activity, or the bondage material which is available in legal pornographic material in the UK. It depicts extreme material of a kind which we believe would be prosecutable under the OPA if it was being openly published or distributed. The underlying premise of the new offence is that this material should have no place in our society and in making its possession illegal, the proposed offence seeks to tackle its circulation.

(III) Rationale for Government Intervention

It is difficult to accurately quantify the financial impact of the new offence. It is however, believed to be low – due to the extreme nature of the material involved and its limited attraction for most individuals. The material covered will already be illegal to publish or distribute under the OPA, so the only new area of criminality will be its possession. Prosecutions under the OPA 1959, for the publication of such material (and also some further types of material not covered by the present proposals,

except for option A) have fallen over recent years from 131 in 1999 to 35 in 2005, although this may be in part due to the police focus on tackling child pornography and focusing on the main distributors. It is also apparent that tolerance, expressed through the courts, of sexual material which 10 years ago would have been found to be obscene, has increased.

The main risk addressed is that seeking possession of extreme pornographic material is part of a cycle of supply and demand. New technology facilitates the easier distribution of such material, the vast majority of which comes from abroad, thus evading current controls. The new offence will help close the gap in existing controls and tackle demand at source.

2. Options Considered during the Consultation

Option one - adding a possession offence to the Obscene Publications Act 1959

Option two - adding a possession offence limited to the category of material set out in the Consultation Paper but under the umbrella of the OPA

Option three (our preferred option) - a new free standing offence in respect of the category of material set out in the Consultation Paper;

Option four – do nothing.

3. Benefits

For options one to three the proposal to strengthen controls on extreme pornographic material will:

- i) help to protect society, particularly children, from exposure to such material, to which access is increasingly difficult to control.
- (ii) enable the enforcement authorities to take action against individuals who, by procuring such material by whatever means, encourage its further production.

With regard to Option 4 – do nothing – there will be no additional benefit.

4. Costs

Option one would be the simplest in legislative terms, but possibly the most costly approach, retaining the general test of obscenity and amending the 1959 Act to add an offence of possession. However, this would cover a wide range of material and there are difficulties in squaring the purpose of the Act with a simple possession offence. For example, under the OPA whether material is obscene depends on whether it would deprave or corrupt "those likely to read, see or hear it" and this has been interpreted by the courts to mean that the threshold of obscenity can be lower if the likely audience or recipient is a child. This proposal would significantly extend the scope of the OPA, possibly leading to an increase in prosecutions, but would not achieve the clarity which would help individuals to identify material which was clearly illegal, when making personal decisions about viewing pornography.

Option two would offer greater clarity by limiting the material to be covered by the possession offence to the most extreme as set out, such as material which showed (or purported to show) serious sexual violence, bestiality and necrophilia. This could be linked to the OPA so that it formed a sub-set of material covered by the "deprave

and corrupt" test. However, as for option one, there would be a mismatch between the purpose of the Act and the amendment. In addition, there would have been the possibility of confusion for the courts. The scope of the OPA might gradually become limited by reference to the list of proscribed material, so that, over a period of time, only material falling within that defined category would be considered obscene. The flexibility of the test of obscenity which currently allows the Act to deal with material featuring extreme violence (not necessarily with sexual overtones), drug taking, animal cruelty, etc. would be lost. It is believed that, in view of the nature of this material there would only be a small number of proceedings, but, in the light of the issues above these could be time-consuming and costly proceedings.

Option three, (the Government's preferred option) preserves the flexibility of the OPA to deal with the publication of a range of material but allows for the development a new, free-standing offence for possession of a limited category of material. (Anyone publishing or distributing this material within the UK would also be prosecutable under the new offence since they would necessarily also possess it.) The offence is limited to pornographic material, as set out in paragraph 1(l), that is material produced solely or primarily for the purpose of sexual arousal or gratification. It is not the intention to impinge on the freedom of the media in terms of news coverage, or of analysis or documentary footage of real events, including atrocities committed in other countries. It is believed that, in view of the nature of this material there would only be a small number of proceedings and the cost would be "de minimus".

Option four – do nothing – there will be no additional cost but there is a risk of sending a message that the Government believes that the production and acquisition of such material was harmless, or not worthy of attention. In addition, the benefits from the proposals would not be realised, which carries a human cost for individuals and society.

5. Costs (CJS)

The following estimated costs have been identified for option 3, based on a projected total of 30 prosecutions per annum where 15 cases were tried in the Magistrate Court and 15 cases in a Crown Court, although it is expected that most trials will occur in the Magistrates Court. The estimated costs also take into account a worst case scenario whereby all defendants get legal aid.

Police Arrest and Charge	-	£10890
Crown Prosecution Service	-	£65192
Legal Aid Costs	-	£127935
Courts	-	£200220
Sub Total	-	£404237

Estimates on custodial impact are based on those derived from the sentencing statistics for offences under Section 160 of the Criminal Justice Act 1988 (Possession of Indecent Photographs of Children) which carries a maximum penalty of 5 years imprisonment. In 2004, 45% of those charged received cautions, 40% of those convicted received community sentences and for those sentenced to imprisonment the average sentence length was 9.8 months. Based on these figures the estimated NOMS costs resulting from 30 successful prosecutions under the new offence would be:

14 cautions	£0
6 community sentences	£19800
Sub Total	£19800

The overall total estimated total cost in the first year to the CJS for prosecution and non-custodial sentences is therefore estimated at £424037.

There are also expected to be 10 Custodial sentences (average of 6 mths) which equates to 5 prison places per annum.

Change to the maximum sentence in the Obscene Publications Act 1959

The proposals also include an increase in the maximum sentence in the Obscene Publications Act 1959 from three years imprisonment to five years imprisonment. In 2004 there were 30 prosecutions where 14 sentences involved immediate custody, with an average sentence length of 6.3 months. This equates, approximately to 3.675 prison places per annum. The raising of the maximum sentence by 66%, if reflected by a similar increase in sentencing for this offence, would require an estimated further 2.4 prison places.

6. Sectors and groups affected

Business

It is our belief that no major business sector in the UK should be adversely affected by these proposals. The material covered by the new offence is already illegal under the Obscene Publications Act 1959 and cannot be published or distributed for gain. There would therefore be no impact on the legitimate UK adult film, video or computer-game industry, although there may be a small increase in the number of enquiries made by law enforcement to the British Board of Film Classification to establish whether or not a particular film has been classified. The mainstream broadcast entertainment sector would be unaffected as would those with a legitimate reason to possess the material.

It is recognised that there may be some impact for British Internet Service Providers. ISPs act as transporters of information across the internet but they are not responsible for the data itself, as they are unaware of what is being transmitted. (Regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002 state that ISP's are protected from civil or criminal action in respect of the unlawful activity of which they have no knowledge).UK ISPs already work with the Internet Watch Foundation, an industry funded body, in removing material which is considered to be in breach of the Protection of Children Act 1978 or the Obscene Publications Act 1959. Depending on the nature of their service, some ISPs see a requirement to train some members of their staff about the new legislation, particularly those involved in filtering services.

In 2006 the IWF received approximately 4000 reports about potentially obscene material, although only a very small number of these were hosted in

the UK. It is currently envisaged that reports about the possession of the material identified by the new offence would also be made to the IWF, as well as local law enforcement, because they already possess great expertise in this area. Numbers of reports are difficult to predict but as this is a possession offence for material which is already illegal to publish and distribute, it is unclear why large numbers of new reports would be made to the IWF, although clearly a rise in reports is likely in the short term. In responses to the consultation the industry asked that clear reporting procedures be developed. Work on this is continuing with the industry and the RIA will be updated when the procedures are completed and agreed with the relevant groups.

Citizens

In recent years there have been a declining number of arrests under the OPA 1959 and information is not available about the ethnic background of those arrested. It is not apparent to us that the proposed changes in the law will have any adverse effect on black and minority ethnic (BME) groups. As part of the consultation, numerous organisations, including BME groups were asked for their views, but none identified any adverse effect on their communities.

With regard to gender, the vast majority of defendants (in 2005, 31 defendants out of 35) who are prosecuted under the OPA 1959 are male. The proposed offence does not distinguish between the gender of the “participants”.

7. Small Firms Impact Test

Small businesses should not be adversely affected by this change in legislation as the commercial distribution of extreme pornographic material within the UK is already illegal, although the offence may make it easier for legitimate businesses to distinguish between legal pornography and clearly illegal obscene material. Where the offence takes place on work premises – ie material is downloaded on an employer’s pc, it is the intention of the offence to apply to the staff involved, who would be regarded as being in possession. Many firms already have Internet access policies, prohibiting the downloading of pornographic material in the workplace but smaller employers are less likely to have internet policies. It is clearly good practice for employers to have Internet Access Policies and, it would appear to us, that there would be minimal cost in doing so. As with other areas of the criminal law, the proposals contain no requirement to put such mechanisms in place.

There has been concern that some firms, for instance companies which develop software to filter material received from the internet, would fall foul of a possession offence if, through testing out their software they came into possession of extreme pornographic material. We believe however that possession under such circumstances would be covered by the defence of legitimate reason which will be included in the legislation.

8. Competition assessment

A competitive filter has not been completed because the proposal concerns the possession of material which is already illegal to publish and distribute.

To the extent that there is competition from companies based outside the UK, which currently sell material in a way which may bypass current controls, there should be some benefit to those firms which are UK based and follow UK legislation.

Concerns were also raised during the consultation that legitimate businesses which sold 'adult' material would be affected by the new legislation. However, the proposals do not affect material which is currently legal to sell and the prohibition extends only to images, not to the use of other sexual paraphernalia. We have no reason to believe therefore that there would be adverse effects on businesses which supply legal material.

9. Race and Equality Impact Assessment (EIA)

There is a legal obligation to equality assess for race, disability and gender impact when public bodies are considering new policies. In line with this obligation a preliminary EIA was completed and it is believed that, in addition to the comments made in section 7, the new offence will not impact adversely on race and disability.

10. Enforcement and Sanctions

The new offence to make illegal the possession of extreme pornography will be implemented through changes in primary legislation and enforcement of any legislation will be the responsibility of the UK law enforcement agencies.

11. Monitoring and evaluation

A scheme to monitor and review the effect of any change in legislation will be put into place after the legislation is implemented. This evaluation will consider the impact on law enforcement, the courts and small businesses.

12. Consultation

A wide public consultation was undertaken. Nearly 400 responses to the consultation were received. The majority of responses received from individuals, were either opposed to Government legislation in this area or felt that the categories in the proposals were too broad. The majority of responses received from organisations were supportive of the proposals. A petition objecting to the presence of extreme internet sites promoting violence against women in the name of sexual gratification containing approximately 50,000 signatures was also received. As a result of the comments received during the consultation the threshold for material to be considered under the new offence was raised from content which included realistic depictions of serious sexual violence or violence in a sexual context, where 'serious' was equivalent to where a prosecution could be brought for grievous bodily harm (in England and Wales) to a higher threshold of life-threatening or likely to result in serious or disabling injury.

The full Government response to the Consultation is available at: <http://www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/?version=1>

13. Summary and Recommendation

This RIA identifies that there will be a risk of a need for increased enforcement activity for all UK enforcement agencies and the courts, but the circulation of extreme pornographic material should be inhibited. Whilst difficult to quantify, the costs and risks to business are expected to be low, because there is only a very small sector of business which comes into contact with this material and it would already be liable to prosecution if it published and distributed the material in the UK. For the reasons

outlined above the Government believes that the Option to create a free-standing offence is the best approach.

Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Gerry Sutcliffe
Parliamentary Under Secretary of State
Ministry of Justice
20 June 2007